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LEGISLATIVE HISTORY

Public Law 87-346
H. R. 6775

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INDEX AND SUMMARY OF H. R. 6775

Feb. 15, 1961	Rep. Bonner introduced H. R. 4299 which was referred to the House Merchant Marine and Fisheries Committee. Print of bill as introduced.
May 2, 1961	House subcommittee ordered a clean bill introduced for reporting to the full committee, in lieu of H. R. 4299.
May 3, 1961	Rep. Bonner introduced H. R. 6775 which was referred to the House Merchant Marine and Fisheries Committee. Print of bill as introduced.
May 4, 1961	House committee voted to report (but did not actually report) H. R. 6775.
Jun. 8, 1961	House committee reported H. R. 6775 with amendments. H. Report No. 498. Print of bill and report.
Jun. 12, 1961	House passed H. R. 6775 as reported.
Jun. 13, 1961	H. R. 6775 was referred to the Senate Commerce Committee. Print of bill as referred.
Jul. 26, 1961	House subcommittee voted to report (but did not actually report) H. R. 4299 with amendments.
Aug. 29, 1961	Senate committee voted to report (but did not actually report) H. R. 6775.
Aug. 31, 1961	Senate committee reported H. R. 6775 with amendments. S. Report No. 860. Print of bill and report.
Sept. 7, 1961	Senate passed over H. R. 6775.
Sept. 12, 1961	Senate began debate on H. R. 6775.
Sept. 13, 1961	Senate continued debate on H. R. 6775.
Sept. 14, 1961	Senate passed H. R. 6775 with amendments. Senate conferees were appointed.
Sept. 15, 1961	House conferees were appointed.
Sept. 20, 1961	House received conference report on H. R. 6775. H. Report No. 1247. Print of conference report.

INDEX AND SUMMARY OF H. R. 6775, cont'd:

Sept. 21, 1961 House agreed to conference report on H. R. 6775.

Sept. 23, 1961 Senate agreed to limit debate on the conference report on H. R. 6775.

Sept. 25, 1961 Senate agreed to the conference report on H. R. 6775.

Oct. 3, 1961 Approved: Public Law 87-346.

DIGEST OF PUBLIC LAW 87-346

CONTINUATION OF DUAL RATE SYSTEM OF STEAMSHIP CONFERENCES.

Amends the Shipping Act of 1916, as amended, so as to provide for the continued operation of steamship conferences (associations of ocean common carriers) and the legal authority for such conferences to continue the dual rate system of ocean freight rates provided they meet certain specific provisions of the Act and regulations thereunder promulgated by the Federal Maritime Commission. Prescribes conditions to be met before dual rate contracts and agreements may be approved by the Commission. Provides that the Commission shall disapprove, cancel, or modify any agreement, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of provisions of this Act, and shall approve all other agreements, modifications, or cancellations. Provides that any contract, amendment, or modification of any contract not permitted by the Commission shall be unlawful, and that contracts, amendments, and modifications shall be lawful only when and as long as permitted by the Commission.

87TH CONGRESS
1ST SESSION

H. R. 4299

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1961

Mr. BONNER introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 14, Shipping Act, 1916, is hereby amended as
4 follows:

5 (a) Insert “(a)” immediately after “First”.

6 (b) Add the following subsection (b) at the end of
7 paragraph “First”:

8 “(b) Charge or enter into any combination, agreement,
9 or understanding, express or implied, to charge any shipper,
10 solely or in part because he does not agree to or give his ex-
11 clusive patronage, higher freight rates or charges than are

1. accorded to any shipper who does agree to or give such ex-
2. clusive patronage: *Provided, however,* That on application
3. the Federal Maritime Board may in its discretion, permit
4. the use by any carrier or conference of carriers in foreign
5. commerce of any otherwise lawful contract, available to all
6. shippers in the trade on equal terms and containing provi-
7. sion for lower rates for exclusive patronage which the Fed-
8. eral Maritime Board finds is not intended, and will not be
9. reasonably likely, to cause the exclusion of other carriers
10. from the trade and which (1) guarantees to the shipper,
11. for the life of his contract subject to renewal, as much space
12. for the carriage of his goods as he shall require on reasonable
13. notice; (2) fixes tariff rates for the carriage of goods under
14. such contract for a reasonable period, subject to approval by
15. the Federal Maritime Board, but in no case less than ninety
16. days; (3) covers only those goods of the shipper as to the
17. shipment of which he independently exercises the power to
18. select the carrier; (4) does not require the shipper to divert
19. shipment of goods from natural routings not served by the
20. carrier where other more direct carriage is available; (5)
21. limits damages recoverable for breach by either party to ac-
22. tual damages determined in accordance with the principles
23. of commercial contract law; (6) permits the shipper to
24. terminate without penalty if the carrier or conference in-
25. creases rates or charges applicable to the cargo within the

1 contract period; (7) permits the shipper to terminate with-
2 out penalty where the other signatory is a conference of
3 carriers and when the carrier or carriers that have custom-
4 arily carried the major share of the shipper's cargo with-
5 draw from the conference; (8) terminates without penalty
6 at the end of the contract period unless affirmatively re-
7 newed; (9) provides for a spread between ordinary rates
8 and rates charged for exclusive patronage shippers that the
9 Board finds to be reasonable in all the circumstances; and
10 (10) contains such other provisions not inconsistent here-
11 with as the Board shall require."

12 SEC. 2. Section 15 is amended to read as follows:

13 "SEC. 15. That every common carrier by water, or
14 other person subject to this Act, shall file immediately with
15 the Federal Maritime Board a true copy, or, if oral, a true
16 and complete memorandum, of every agreement with an-
17 other such carrier or other person subject to this Act, or
18 modification or cancellation thereof, to which it may be a
19 party or conform in whole or in part, fixing or regulating
20 transportation rates or fares; giving or receiving special
21 rates, accommodations, or other special privileges or advan-
22 tages; controlling, regulating, preventing, or destroying com-
23 petition; pooling or apportioning earnings, losses, or traffic;
24 allotting ports or restricting or otherwise regulating the
25 number and character of sailings between ports; limiting or

1 regulating in any way the volume or character of freight or
2 passenger traffic to be carried; or in any manner providing
3 for an exclusive, preferential, or cooperative working ar-
4 rangement. The term 'agreement' in this section includes
5 understandings, conferences, and other arrangements.

6 "The Board shall by order after notice and hearing dis-
7 approve, cancel, or modify any agreement or any modifica-
8 tion or cancellation thereof, whether or not previously
9 approved by it, that it finds to be unjustly discriminatory or
10 unfair as between carriers, shippers, exporters, importers, or
11 ports, or between exporters from the United States and their
12 foreign competitors, or to operate to the detriment of any
13 segment of the commerce of the United States, or to be in
14 violation of this Act, and shall approve all other agreements,
15 modifications, or cancellations that it affirmatively finds to be
16 in the public interest. No such agreement shall be approved,
17 nor shall continued approval be permitted for any agreement,
18 (1) between carriers or conferences of carriers serving dif-
19 ferent trades that would otherwise be naturally competitive,
20 or (2) which includes ports not serviced by the signatories
21 even if otherwise within the general trading area, or which
22 permits signatories not serving a particular port to vote in
23 matters affecting such port, or (3) which permits shippers
24 who act as carrier agents to represent such carrier in con-
25 ference activities, or (4) whose probable effect will be rea-

1 sonably likely to exclude other carriers from the trade, or
2 (5) fails to provide that every qualified carrier in the trade
3 will be admitted to membership on application.

4 “No such agreement shall be aproved unless it shall (1)
5 designate a person upon whom service of process may be
6 made within the United States which will be effective against
7 every signatory to such agreement, and (2) contains provi-
8 sion that every signatory shall provide records or other
9 information, wherever located, required by any proper order
10 of the Board issued under section 21 hereof.

11 “Any agreement and any modification or cancellation of
12 any agreement not approved or disapproved by the Board
13 shall be unlawful, and agreements, modifications, and can-
14 cellations shall be lawful only when and as long as ap-
15 proved by the Board; before approval or after disapproval
16 it shall be unlawful to carry out in whole or in part, directly
17 or indirectly, any such agreement, modification, or cancel-
18 lation; except that tariffs of rates, fares, and charges (other
19 than special rates and charges for contracts required to be
20 approved under the proviso clause of section 14 First (b)
21 hereof) agreed upon by approved conferences, and changes
22 and amendments thereto, if otherwise in accordance with
23 law, may, in the Board’s discretion be permitted to take
24 effect without prior approval upon compliance with the post-

1 ing and filing requirements of section 18 (b) hereof and with
2 the provisions of any regulations the Board may adopt, and
3 except that agreements existing at the time of the effective
4 date of this Act which are covered by the provisions of this
5 section may continue in operation for a period of six months.
6 The Board shall disapprove any conference rate, fare, or
7 charge which after hearings it finds to be so unreasonably
8 high or low as to be detrimental to any segment of the
9 commerce of the United States whether by unreasonably
10 reducing or threatening to reduce the natural flow of any
11 exports or imports, or otherwise. Whenever the Board finds
12 any such rate, fare, or charge to be detrimental to any seg-
13 ment of the commerce of the United States it may fix and
14 order enforced a reasonable maximum or minimum rate,
15 fare, or charge, as the case may be, which it has determined
16 not to be detrimental to any segment of the commerce of
17 the United States.

18 “Every agreement, modification, or cancellation lawful
19 under this section shall be excepted from the provisions of
20 the Act approved July 2, 1890, entitled ‘An Act to protect
21 trade and commerce against unlawful restraints and monop-
22 olies’, and amendments and Acts supplementary thereto, and
23 the provisions of sections 73 and 77, both inclusive, of the Act
24 approved August 27, 1894, entitled ‘An Act to reduce taxa-

1 tion, to provide revenue for the Government, and for other
2 purposes', and amendments and acts supplementary thereto.

3 "Whoever violates any provision of this section shall
4 be liable to a penalty of \$1,000 for each day such violation
5 continues, to be recovered by the United States in a civil
6 action."

7 SEC. 3. Section 18 is hereby amended as follows:

8 (a) Insert "(a)" immediately after the section num-
9 ber "18".

10 (b) Add the following subsection 18 (b) :

11 "(b) (1) From and after ninety days following enact-
12 ment hereof every common carrier by water in foreign com-
13 merce and every conference of such carriers shall file with
14 the Board and keep open to public inspection schedules show-
15 ing all the rates, fares, and charges for or in connection with
16 transportation between all points on its own route; and, if
17 a through route has been established, all the rates, fares, and
18 charges for or in connection with the transportation between
19 points on its own route and points on the route of any other
20 carrier by water. The schedules filed and kept open to public
21 inspection as aforesaid by any such carrier or conference
22 shall plainly show the places between which passengers and/
23 or freight will be carried, and shall contain the classification
24 of freight and of passenger accommodations in force, and shall

1 also state separately each terminal or other charge, privilege,
2 or facility granted or allowed, and any rules or regulations
3 which in any wise change, affect, or determine any part or
4 the aggregate of such aforesaid rates, fares, or charges, or the
5 value of the service rendered to the passenger, consignor, or
6 consignee, and shall include the terms and conditions of any
7 passenger ticket, bill of lading, contract or affreightment or
8 other document evidencing the transportation agreement.
9 Such carrier or conference in establishing and fixing rates,
10 fares, or charges may make equal rates, fares, or charges for
11 similar service between all ports of origin and all ports of des-
12 tination. Such schedules shall be plainly printed, and copies
13 shall be kept posted in a public and conspicuous place at
14 every wharf, dock, and office of such carrier in the United
15 States where passengers or freight are received or discharged,
16 in such manner that they shall be readily accessible to the
17 public and can be conveniently inspected. Copies of such
18 schedules shall be made available for sale to such persons at
19 reasonable prices.

20 “(2) No change shall be made in the rates, fares, or
21 charges, or classifications, rules, or regulations, which have
22 been filed and posted as required by this section, except by
23 the publication, filing, and posting as aforesaid of a new
24 schedule or schedules which shall become effective not earlier
25 than thirty days after date of posting and filing thereof with

1 the Board, and such schedule or schedules shall plainly show
2 the changes proposed to be made in the schedule or schedules
3 then in force and the time when the rates, fares, charges,
4 classifications, rules or regulations as changed are to become
5 effective: *Provided*, That the Board may, in its discretion
6 and for good cause, allow changes upon less than the period
7 of thirty days herein specified.

8 “(3) No common carrier by water in foreign commerce
9 or conference of such carriers shall charge or demand or col-
10 lect or receive a greater or less or different compensation for
11 the transportation of passengers or property or for any serv-
12 ice in connection therewith than the rates, fares, and charges
13 which are specified in its schedules filed with the Board and
14 duly posted and in effect at the time; nor shall any such car-
15 rier rebate, refund or remit in any manner or by any device
16 any portion of the rates, fares, or charges so specified, nor
17 extend or deny to any person any privilege or facility, ex-
18 cept in accordance with such schedules.

19 “(4) The Board shall by regulations prescribe the form
20 and manner in which the schedules required by this section
21 shall be published, filed, and posted; and the Board is author-
22 ized to reject any schedule filed with it which is not in con-
23 sonance with this section and with such regulations. Any
24 schedule so rejected by the Board shall be void and its use
25 shall be unlawful.

1 “(5) In addition to any other penalty provided by law,
2 the Board may assess a penalty for the violation of any pro-
3 vision of this section by a common carrier by water in foreign
4 commerce in an amount up to \$1,000 per day for each day
5 that such violation continues, to be recovered by the United
6 States in a civil action.”

7 SEC. 4. Section 19 is amended by inserting “(a)” im-
8 mediately after the section number “19”, and adding the
9 following subsections:

10 “(b) Whenever the Board finds, upon preliminary in-
11 vestigation during the period prior to the effective date of
12 any reduced rate or charge (as provided in section 18 (b)
13 hereof), that such rate or charge is being instituted with the
14 intention of excluding or driving out of the trade another
15 carrier, it shall have power by order to defer the effective
16 date of such rate or charge for a period (including the origi-
17 nal period of notice) not to exceed seven months. The
18 carrier shall be entitled to a full hearing after entry of such
19 order of deferment. If the Board is satisfied that the car-
20 rier has sustained the burden of proof, it shall vacate such
21 order; otherwise such order shall continue in effect until
22 the expiration of the period of seven months.

23 “(c) If after the expiration of such period the carrier
24 institutes such rate, it shall not increase such rate unless
25 after hearing the Board finds that such proposed increase

1 rests upon changed conditions other than the elimination of
2 said competition.”

3 SEC. 5. The Federal Maritime Board shall with all pos-
4 sible expedition adopt rules and regulations to carry into
5 effect the intent of this Act.

A BILL

To amend the Shipping Act, 1916, as amended,
to provide for the operation of steamship
conferences.

By Mr. BONNER

FEBRUARY 15, 1961

Referred to the Committee on Merchant Marine and
Fisheries

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For Department
Staff Only)

Issued May 3, 1961
For actions of May 2, 1961
87th-1st, No. 73

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HIGHLIGHTS: House received conference report on minimum wage bill. Rep. Johnson, Calif., introduced and discussed bill to provide increased authorizations for forest roads and trails.

HOUSE

1. MINIMUM WAGE. Received the conference report on H. R. 3935, the minimum wage bill (H. Rept. 327) (pp. 6541-7). As reported by the conference committee the bill includes the following provisions:
 - Increases the minimum wage for presently covered employees to \$1.15 an hour on the effective date of the bill and to \$1.25 an hour 2 years thereafter;
 - Increases the minimum wage for newly covered employees to \$1.25 an hour over a 5-year period;
 - Exempts workers who may occasionally engage in livestock auction operations as an adjunct to their regular work of raising livestock;
 - Exempts workers employed at country elevators that market farm products for farmers, provided not more than 5 employees are employed at the elevator;
 - Exempts workers engaged in ginning cotton for market at any location in a county where cotton is grown in commercial quantities;
 - Exempts workers engaged in processing shade-grown tobacco for use as cigar wrapper tobacco if the workers are engaged in the growing and harvesting of such tobacco;
 - Exempts workers engaged in the transportation of fruits and vegetables from the farm to a place of first processing or first marketing within the same State, and the transportation between the farm and any point within the same State of workers employed or to be employed in the harvesting of the commodity;

Requires the Secretary of Labor, when he has reason to believe that employment in an industry under the act has decreased or is likely to decrease because of foreign competition, to investigate the matter and report to the President and Congress; and

Requires the Secretary of Labor to study the system of exemptions now available for handling and processing of agricultural products and to submit to the 2nd session of the 87th Congress a report on the results of the study, with recommendations for further legislation designed to simplify and remove inequities in the application of such exemptions.

2. WATER POLLUTION. The Rules Committee reported a resolution for consideration of H. R. 6441, to amend the Federal Water Pollution Control Act to provide for a more effective program of water pollution control. p. 6563
3. ECONOMIC REPORT. Rep. Patman submitted the Joint Economic Committee's 1961 Economic Report (H. Rept. 328). pp. 6563
4. STEAMSHIP CONFERENCES. The "Daily Digest" states that the Merchant Marine and Fisheries Subcommittee on Steamship Conferences "ordered a clean bill introduced in the House, for reporting to the full committee, in lieu of H. R. 4299, to provide for the operation of steamship conferences." p. D304
5. LEGISLATIVE PROGRAM. Rep. McCormack announced that the conference report on H. R. 3935, the minimum wage bill, and H. R. 6441, to amend the Federal Water Pollution Control Act to provide for a more effective program of water pollution control, will be considered today, May 3. pp. 6556-7

SENATE

6. FOREIGN AID. The Appropriations Committee voted to report (but did not actually report) without amendment H. R. 6518, to appropriate \$500 million for the Inter-American Social and Economic Cooperation Program and \$100 million for the Chilean Reconstruction and Rehabilitation Program. p. D301
7. EDUCATION. The Education Subcommittee of the Labor and Public Welfare Committee voted to report to the full committee S. 1021, to provide Federal assistance for public school facilities, including schools in Federally impacted areas. p. D302

ITEMS IN APPENDIX

8. FOREIGN AID. Extension of remarks of Rep. Rhodes inserting an article expressing approval of House passage of the aid bill for Latin America. pp. A3002-3
9. TRANSPORTATION. Extension of remarks of Rep. Shelley commending and inserting an article discussing current dual rate legislation. pp. A3009-10
10. FARM RESEARCH. Rep. Ellsworth inserted an article, "Big Lag Is Found in Farm Research -- Less Than 1 Percent of Income Is Spent for Agriculture." p. A2989
11. TAXATION. Rep. Ellsworth inserted an article "A Sound Tax Purpose: To Boost the Economy," criticizing the President's proposal for the cancellation of the \$50 exemption and 4-percent credit on dividend taxes. p. A2996

87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 1961

Mr. BONNER introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 14, Shipping Act, 1916, is hereby amended as
4 follows:

5 (a) Insert “(a)” immediately after “First”.

6 (b) Add the following subsection (b) at the end of
7 paragraph “First”:

8 “(b) Charge or enter into any combination, agreement,
9 or understanding, express or implied, to charge any person,
10 solely or in part because he does not agree to or give all or
11 any part of his patronage, higher freight rates or charges

1 than are accorded to any person who does agree to or give
2 such patronage: *Provided, however,* That notwithstanding
3 any other provision of this Act, on application the Board
4 shall, after notice, permit the use by any carrier or confer-
5 ence of carriers in foreign commerce of any contract, amend-
6 ment or modification thereof, which is available to all
7 shippers and consignees on equal terms, and conditions, which
8 provides lower rates to a shipper or consignee who agrees to
9 give all or any part of his patronage to such carrier or con-
10 ference of carriers and which the Board finds will be neither
11 detrimental to the commerce of the United States nor con-
12 trary to the public interest, and which expressly (1) as-
13 sures to the contract shipper as much of the available space
14 on the vessels of the carrier or conference of carriers as is
15 necessary, on reasonable notice, to meet the normal demands
16 of the contract shipper; (2) provides that, whenever a tariff
17 rate for the carriage of goods becomes effective, insofar as
18 it is under the control of the carrier or conference of carriers,
19 it shall not be increased for a reasonable period, but in no
20 case less than ninety days; (3) covers only those goods of
21 the contract shipper as to the shipment of which he has the
22 legal right at the time of shipment to select the carrier; (4)
23 does not require the contract shipper to divert shipment of
24 goods from natural routings not served by the carrier or con-
25 ference of carriers where direct carriage is available; (5)

1 limits damages recoverable for breach by either party to
2 actual damages to be determined after breach in accordance
3 with the principles of commercial contract law: *Provided*,
4 *however*, That the contract may specify that in the case of
5 a breach by a contract shipper or consignee the damages
6 may be an amount not exceeding the contract rate on the
7 particular shipment, less the cost of handling; (6) permits
8 the contract shipper to terminate at any time without
9 penalty upon ninety days' notice; (7) provides for a spread
10 between ordinary rates and rates charged for contract
11 shippers that the Board finds to be reasonable in all the cir-
12 cumstances but which spread shall in no event be more than
13 15 per centum of the ordinary rates; and (8) contains such
14 other provisions not inconsistent herewith as the Board shall
15 require or permit. The Federal Maritime Board shall with-
16 draw permission which it has granted under the authority
17 contained in this section for the use of any contract if it finds,
18 after notice and hearing, that the use of such contract is
19 detrimental to the commerce of the United States or contrary
20 to the public interest. The carrier or conference of carriers
21 may on ninety days notice terminate without penalty the
22 contract rate system herein authorized, in whole, or with re-
23 spect to any commodity or service: *Provided, however*, That
24 after such termination the carrier or conference of carriers
25 may not reinstitute such contract rate system or part thereof

1 so terminated without prior Board approval in accordance
2 with the provisions of this section. As used in this section,
3 the term 'contract shipper' means a person other than a car-
4 rier or conference of carriers who is a party to a contract the
5 use of which may be permitted under this section."

6 SEC. 2. Section 15, Shipping Act, 1916, is amended to
7 read as follows:

8 "SEC. 15. That every common carrier by water, or
9 other person subject to this Act, shall file immediately
10 with the Board a true copy, or, if oral, a true and com-
11 plete memorandum, of every agreement with another such
12 carrier or other person subject to this Act, or modification
13 or cancellation thereof, to which it may be a party or con-
14 form in whole or in part, fixing or regulating transportation
15 rates or fares; giving or receiving special rates, accommo-
16 dations, or other special privileges or advantages; controlling,
17 regulating, preventing, or destroying competition; pooling
18 or apportioning earnings, losses, or traffic; allotting ports or
19 restricting or otherwise regulating the number and char-
20 acter of sailings between ports; limiting or regulating in any
21 way the volume or character of freight or passenger traffic
22 to be carried; or in any manner providing for an exclusive,
23 preferential, or cooperative working arrangement. The
24 term 'agreement' in this section includes understandings,
25 conferences, and other arrangements.

1 “The Board shall by order, after notice and hearing,
2 disapprove, cancel, or modify any agreement, or any modi-
3 fication or cancellation thereof, whether or not previously
4 approved by it, that it finds to be unjustly discriminatory
5 or unfair as between carriers, shippers, exporters, importers,
6 or ports, or between exporters from the United States and
7 their foreign competitors, or to operate to the detriment of
8 the commerce of the United States, or to be in violation
9 of this Act, and shall approve all other agreements, modifi-
10 cations, or cancellations that it finds not contrary to the
11 public interest. No such agreement shall be approved, nor
12 shall continued approval be permitted for any agreement,
13 (1) between carriers or conferences of carriers serving dif-
14 ferent trades that would otherwise be naturally competitive,
15 unless in the case of agreements between carriers, each car-
16 rier, or in the case of agreements between conferences, each
17 conference, retains the right of independent action, or (2)
18 which permits shippers who act as carrier agents to repre-
19 sent such carrier in conference activities unless the Board
20 finds that no other qualified person is available, or (3) in
21 respect to conference agreements, fails to provide reasonable
22 and equal terms and conditions for the admission and re-
23 admission of other qualified carriers in the trade, or fails
24 to provide that any member may withdraw from member-
25 ship without penalty upon reasonable notice.

1 “No such agreement shall be approved unless it shall
2 (1) designate a person upon whom service of process
3 may be made within the United States which will be effec-
4 tive against every signatory to such agreement, and (2)
5 contains provisions that every signatory shall provide rec-
6 ords or other information, wherever located, required by any
7 order of the Board which contains the minimum notice
8 provisions required by the Administrative Procedures Act
9 (5 U.S.C. 1001 and the following). No conference agree-
10 ment shall be approved unless the Board finds that it con-
11 tains effective provisions for policing the obligations under
12 it. The Board shall disapprove any such agreement, after
13 reasonable notice, on a finding of inadequate policing of the
14 obligations under it, or of failure or refusal to adopt and
15 maintain reasonable procedures for the consideration of
16 shippers’ requests and complaints.

17 “Any agreement and any modification or cancellation
18 of any agreement not approved, or disapproved, by the
19 Board shall be unlawful, and agreements, modifications, and
20 cancellations shall be lawful only when and as long as
21 approved by the Board; before approval or after disapproval
22 it shall be unlawful to carry out in whole or in part, directly
23 or indirectly, any such agreement, modification, or cancel-
24 lation; except that tariff rates, fares, and charges, and classi-
25 fications, rules, and regulations explanatory thereof (includ-

1 ing changes in special rates and charges covered by the
2 proviso to section 14 First (b) which do not involve a
3 change in the spread between such rates and charges and
4 the rates and charges applicable to noncontract shippers)
5 agreed upon by approved conferences, and changes and
6 amendments thereto, if otherwise in accordance with law,
7 be permitted to take effect without prior approval upon
8 compliance with the publication and filing requirements of
9 section 18 (b) hereof and with the provisions of any regula-
10 tions the Board may adopt. The Board shall disapprove
11 any conference rate, fare, or charge which after hearing it
12 finds to be so unreasonably high or low as to be detrimental
13 to the commerce of the United States.

14 “Every agreement, modification, or cancellation lawful
15 under this section, or permitted under section 14 First, shall
16 be excepted from the provisions of the Act approved July
17 2, 1890, entitled ‘An Act to protect trade and commerce
18 against unlawful restraints and monopolies’, and amendments
19 and Acts supplementary thereto, and the provisions of
20 sections 73 to 77, both inclusive, of the Act approved
21 August 27, 1894, entitled ‘An Act to reduce taxation, to
22 provide revenue for the Government, and for other purposes’,
23 and amendments and Acts supplementary thereto.

24 “Whoever violates any provision of this section shall be
25 liable to a penalty of not more than \$1,000 for each day such

1 violation continues, to be recovered by the United States in a
2 civil action.”

3 SEC. 3. Notwithstanding the provisions of sections 14
4 First and 15 of the Shipping Act, 1916, as amended by this
5 Act, all agreements which are lawful under the Shipping Act,
6 1916, immediately prior to enactment of this Act, shall re-
7 main lawful for one year after enactment of this Act unless
8 disapproved, canceled, or modified by the Board pursuant to
9 the provisions of the Shipping Act, 1916, as amended by this
10 Act, within that year.

11 SEC. 4. Section 18, Shipping Act, 1916, is hereby
12 amended as follows:

13 (a) Insert “(a)” immediately after the section number
14 “18”.

15 (b) Add the following subsection 18 (b) :

16 “(b) (1) From and after ninety days following enact-
17 ment hereof every common carrier by water in foreign com-
18 merce and every conference of such carriers shall file with
19 the Board and keep open to public inspection tariffs showing
20 all the rates, fares, and charges of such carrier or conference
21 of carriers for transportation between all points on its own
22 route and on any through route which has been established.
23 Such tariffs shall plainly show the places between which
24 freight will be carried, and shall contain the classification of
25 freight in force, and shall also state separately such terminal

1 or other charge, privilege, or facility under the control of the
2 carrier or conference of carriers which is granted or allowed,
3 and any rules or regulations which in any wise change, effect,
4 or determine any part or the aggregate of such aforesaid
5 rates, or charges, and shall include specimens of any bill of
6 lading, contract of affreightment, or other document evidenc-
7 ing the transportation agreement. Copies of such tariffs shall
8 be made available to any person and a reasonable charge may
9 be made therefor. The requirements of this section shall not
10 be applicable to cargo loaded and carried in bulk without
11 mark or count.

12 “(2) No change shall be made in the rates, fares,
13 charges, classifications, rules or regulations, which results in
14 an increase in cost to the shipper, nor shall any new or
15 initial rate of any common carrier by water in foreign com-
16 merce or conference of such carriers be instituted, except
17 by the publication, and filing, as aforesaid, of a new tariff or
18 tariffs which shall become effective not earlier than thirty
19 days after the date of publication and filing thereof with the
20 Board, and such tariff or tariffs shall plainly show the changes
21 proposed to be made in the tariff or tariffs then in force and
22 the time when the rates, fares, charges, classifications, rules
23 or regulations as changed are to become effective: *Provided*,
24 That the Board may, in its discretion and for good cause,
25 allow such changes upon less than the period of thirty days

1 herein specified. Any change in the rates, fares, charges,
2 or classifications, rules or regulations which results in a de-
3 creased cost to the shipper may become effective upon the
4 publication and filing with the Board. The term 'tariff' as
5 used in this paragraph shall include any amendment, supple-
6 ment or reissue.

7 “(3) No common carrier by water in foreign commerce
8 or conference of such carriers shall charge or demand or
9 collect or receive a greater or less or different compensation
10 for the transportation of property or for any service in con-
11 nection therewith than the rates, and charges which are
12 specified in its tariffs on file with the Board and duly pub-
13 lished and in effect at the time; nor shall any such carrier
14 rebate, refund or remit in any manner or by any device any
15 portion of the rates, or charges so specified, nor extend or
16 deny to any person any privilege or facility, except in ac-
17 cordance with such tariffs.

18 “(4) The Board shall by regulations prescribe the
19 form and manner in which the tariffs required by this section
20 shall be published and filed; and the Board is authorized
21 to reject any tariff filed with it which is not in conformity
22 with this section and with such regulations. Any tariff so
23 rejected by the Board shall be void and its use shall be
24 unlawful.

25 “(5) Whoever violates any provision of this section

1 shall be liable to a penalty of not more than \$1,000 for
2 each day such violation continues, to be recovered by the
3 United States in a civil action.”

4 SEC. 5. Section 19, Shipping Act, 1916, is amended
5 by inserting “(a)” immediately after the section number
6 “19”, and adding the following subsection:

7 “(b) It shall be unlawful for any common carrier by
8 water or any conference of carriers, directly or indirectly,
9 to reduce unreasonably its rates or charges for the purpose
10 of destroying competition or eliminating a competitor:
11 *Provided, however,* That nothing contained in the Act shall
12 be construed to prohibit a common carrier by water or a
13 conference of carriers from reducing its rates or charges in
14 good faith to meet competition. Whoever violates any pro-
15 vision of this subsection (b) shall be liable to a penalty of
16 not more than \$1,000 for each day such violation continues,
17 to be recovered by the United States in a civil action.”

18 SEC. 6. Section 20, Shipping Act, 1916, is amended
19 by changing the period at the end thereof to a semicolon
20 and adding the following:

21 “or to prevent the giving by any common carrier by water
22 which is a party to a conference agreement approved pur-
23 suant to section 15 of this Act to, or the soliciting or receipt
24 by the conference or any person, firm, corporation, or agency
25 designated by the conference, information for the purpose

1 of determining whether a shipper or consignee has com-
2 mitted a breach of an agreement with the conference or its
3 member lines or of determining whether a conference mem-
4 ber has committed a breach of the conference agreement,
5 or for the purpose of compiling statistics of cargo move-
6 ment.”

7 SEC. 7. Section 21, Shipping Act, 1916, is amended to
8 read as follows:

9 “SEC. 21. (a) That the Board may require any com-
10 mon carrier by water, or other person subject to this Act, or
11 any officer, receiver, trustee, lessee, agent, or employee
12 thereof, to file with it any periodical or special report,
13 or any account, record, rate, or charge, or any memorandum
14 of any facts and transactions appertaining to the business of
15 such carrier or other person subject to this Act. Such re-
16 port, account, record, rate, charge, or memorandum shall
17 be under oath whenever the Board so requires, and shall be
18 furnished in the form and within the time prescribed by the
19 Board. Every common carrier by water engaged in the
20 foreign commerce of the United States shall (1) designate
21 a person upon whom service of process may be made within
22 the United States in any action, proceeding, or investigation
23 brought by or on behalf of the United States or any agency
24 thereof, and (2) provide records or other information, wher-
25 ever located, required by any order of the Board which

1 contains the minimum notice provisions required by the
2 Administrative Procedure Act (5 U.S.C. 1001 and the
3 following). Whoever fails to file any report, account, rec-
4 ord, rate, charge, memorandum, or other information as
5 required by this section shall forfeit to the United States
6 the sum of \$100 for each day of such default.

7 “(b) Whoever willfully falsifies, destroys, mutilates, or
8 alters any such report, account, record, rate, charge, or
9 memorandum, or willfully files a false report, account, record,
10 rate, charge, or memorandum shall be guilty of a misde-
11 meanor, and subject upon conviction to a fine of not more
12 than \$1,000, or imprisonment for not more than one year,
13 or to both such fine and imprisonment.

14 “(c) The Board shall make such rules and regulations
15 as may be necessary to carry out sections 14 First (b), 15,
16 18 (b), 19 (b), 20, and 21 of this Act.”

A BILL

To amend the Shipping Act, 1916, as amended,
to provide for the operation of steamship
conferences.

By Mr. BONNER

MAY 3, 1961

Referred to the Committee on Merchant Marine and
Fisheries

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For Department
Staff Only)

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87th-1st, No. 75

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HIGHLIGHTS: House received budget amendments increasing and transferring appropriations for various agencies of this Department. Several Senators and Representatives debated Administrations farm program.

SENATE

1. FARM PROGRAM. Sen. Aiken discussed "the record of the Kennedy administration, during its first 100 days, in the field of agriculture," in which he expressed support for parts of the farm program and opposed others. He commended the President's Executive order establishing a food stamp plan, stated that the feed grain program by itself is not likely to raise general farm income but "simply takes income from certain groups of producers and gives it to other groups," and expressed support for certain provisions of the omnibus farm bill, including extension of the school milk program and "strengthening farm cooperatives." He opposed giving the Secretary additional powers proposed in the farm bill, contending that the "bill would go far toward eliminating the constitutional responsibilities of Congress in the field of farm legislation," and that it would not be advisable to give any administration "such broad and autocratic controls over the American farmer as are embodied in the legislation which the President proposes." He Praised Secretary Freeman as having "his whole heart in improving the lot of the American farmer." pp. 6845-9

Sens. Case, S. Dak., Carlson, McCarthy, and Keating commended the statement of Sen. Aiken. pp. 6847-9

2. PERSONNEL. Both Houses received from the President a proposed bill to provide for an additional Assistant Secretary of Labor; to S. Labor and Public Welfare and H. Education and Labor Committees. pp. 6787, 6941
3. SMALL BUSINESS. Sen. Sparkman inserted a press release of the Small Business Administration announcing reduced interest rates on its loans to small firms in areas of substantial labor surplus. pp. 6859-60
4. RESEARCH. Sen. Humphrey commended the report of the S. Government Operations Committee, "Coordination of Information on Current Scientific Research and Development Supported by the U. S. Government," and inserted comments he prepared discussing the report. pp. 6861-2
5. LEGISLATIVE PROGRAM. Sen. Humphrey announced that H. R. 6518, the inter-American aid bill, will be considered next Tues. p. 6876
6. ADJOURNED until Mon., May 8. p. 6876

HOUSE

7. BUDGET. Received from the President proposed budget amendments for this Department, as summarized on the attached table, to provide funds for the following purposes: (H. Doc. 155) (p. 6941)
Reclassification of veterinary positions: Agricultural Research Service, plus \$760,000; Agricultural Marketing Service, plus \$500,000; Appropriation transfers resulting from Departmental Reorganizations: Agricultural Research Service, minus \$3,446,000; Economic Research Service, plus \$9,533,000; Statistical Reporting Service, plus \$3,722,000; Agricultural Marketing Service, minus \$13,883,000; Foreign Agricultural Service, minus \$926,000; to administer Special agricultural conservation program for diverting 1961 crop year corn and grain sorghum acreage: Commodity Stabilization Service, plus \$20,500,000; increase in CCC administrative expense limitation due to increased program volume, plus \$3,360,000; and increased expenses of the National Agricultural Advisory Commission, Office of the Secretary, plus \$23,000. (Changes in CCC amounts other than the limitation on administrative expenses are explained by footnote "b" on the attached table.)
8. FARM PROGRAM. Rep. Quie criticized the Administration farm program, particularly the omnibus farm bill, saying "... we are to abdicate much of our congressional responsibility to formulate farm laws." pp. 6930-2
9. HIGHWAYS. Passed without amendment H. R. 6713, to amend certain laws relating to Federal-aid highways, and to make certain adjustment in the Federal-aid highway program. pp. 6885-7, 6887, 6924
10. RAILROAD MERGER. Rep. Olsen inserted a number of quotations from citizens of Missoula, Mont., opposing the proposed merger of the Great Northern & Northern Pacific and the Chicago, Burlington & Quincy railways. pp. 6934-7
11. STEAMSHIP CONFERENCES. The "Daily Digest" states that the Merchant Marine and Fisheries Committee voted to report (but did not actually report) "H. R. 6775 (amended, a clean bill introduced in lieu of H. R. 4299), to provide for the operation of steamship conferences." p. D316

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For Department
Staff Only)

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HIGHLIGHTS: Senate debated housing bill. House committee reported Commerce-General Government Matters appropriation bill. Sen. McCarthy introduced and discussed bill to require bonds for packers in livestock operations. Sen. Mundt introduced and discussed sugar bill.

HOUSE

- 1. APPROPRIATIONS.** The Appropriations Committee reported H. R. 7577, the Commerce and general Government matters appropriation bill for 1962 (H. Rept. 497). p. 9131
- 2. WOOL.** The "Daily Digest" states, "The 'Digest' of June 6 erroneously stated that H. R. 3680, to extend the Wool Act of 1954, was reported to the full committee by the Subcommittee on Livestock and Feed Grains. Actually the provisions of this bill are to be substituted for section 132 of H. R. 6400, the general farm bill." p. D431
- 3. TAX RATES.** By a vote of 295 to 88, passed without amendment H. R. 7446, to provide a 1-year extension of the existing corporate normal-tax rates (pp. 9080-6, 9098-121). Rejected, 189 to 196, a motion by Rep. Alger to recommit the bill

with instructions to report it with amendments to eliminate the transportation tax on persons (pp. 9119-20).

4. TRANSPORTATION. The Merchant Marine and Fisheries Committee reported with amendment H. R. 6775, to amend the Shipping Act so as to provide for the operation of steamship conferences (H. Rept. 498). p. 9131
5. PUBLIC LANDS. The Subcommittee on National Parks of the Interior and Insular Affairs Committee voted to report to the full committee H. R. 7042, to add certain Federal land to the Lassen Volcanic National Park, Calif. p. D431
6. URBAN AFFAIRS. Rep. Patman inserted his testimony favoring an amendment to the bill concerning a Department of Urban Affairs, providing for a position of equal status for smaller towns and communities. pp. 9129-30
7. LEGISLATIVE PROGRAM. Rep. McCormack announced the program for next week, including the following: Mon., bill to provide for steamship conferences and general Government matters and Commerce appropriation bill for 1962. pp. 9121-2
8. ADJOURNED until Mon., June 12. pp. 9121, 9130

SENATE

9. HOUSING. Continued debate on S. 1922, the omnibus housing bill. pp. 9175-84, 9185-9239
Agreed to the following amendments:
 - By Sen. Case, S. Dak., 46 to 42, to strike out Title VI of the bill which have provided Federal assistance to State and local governments in preserving open-space land in and around urban areas. pp. 9211-19
 - By Sen. Fong "to grant to lessee farmers the benefit of provisions of the law on farm housing loans - that is, farmers who are farming lands that are being leased." pp. 9221-2Rejected the following amendments:
 - By Sen. Humphrey, for himself and Sen. Scott, 43 to 51, which would have provided that municipalities with populations of 150,000 or less which are located in areas designated by the Secretary of Labor for redevelopment assistance or distressed areas would be eligible for the three-fourths urban renewal grant from the Federal Government. pp. 9198-9202
 - By Sen. Javits, 28 to 59, which would have permitted the VA to make direct housing loans to veterans in any area in which private capital is not generally available, rather than only to veterans in rural areas or small cities or towns as provided for in present law. pp. 9207-11
10. THE AGRICULTURE AND FORESTRY COMMITTEE reported the following bills: p. 9135
 - S. 302, without amendment, to authorize the appropriation of an additional \$2 million for the purchase of land within the boundaries of the Superior National Forest, Minn. (S. Rept. 359).
 - S. 650, without amendment, to amend the Watershed Protection and Flood Prevention Act so as to permit any irrigation or reservoir company, water users' association, or similar organization approved by the Secretary of Agriculture to sponsor works of improvement (S. Rept. 357).
 - S. 848, without amendment, to authorize the Secretary of Agriculture to convey a parcel of forest land to the town of Tellico Plains, Tenn. (S. Rept. 356).

PROVIDING FOR THE OPERATION OF STEAMSHIP CONFERENCES

JUNE 8, 1961.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BONNER, from the Committee on Merchant Marine and Fisheries,
submitted the following

R E P O R T

[To accompany H.R. 6775]

The Committee on Merchant Marine and Fisheries to whom was referred the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

On page 2, line 10, after the word “finds” and before the words “will be” insert the following:

is not intended, and will not be reasonably likely, to cause the exclusion of any other carrier from the trade, and which the Board finds

On page 3, line 18, after the word “contract” and before the word “is”, insert the following:

tends to cause the elimination from, or prevent the entry into, the trade of any carrier, or

On page 5, line 20, after the word “or”, insert the following:

(3) whose probable effect will be reasonably likely to exclude any other carrier from the trade, or

On page 5, line 20, delete “(3)” and insert in lieu thereof “(4)”.

PURPOSE OF THE BILL

The purpose of this bill is to enact into permanent legislation provisions for the operation of certain aspects of steamship conferences, under specified safeguards, and to correct certain deficiencies

in existing statutory regulation affecting international shipping engaged in the foreign commerce of the United States.

The aim of the bill is the betterment of the American merchant marine and the stability of foreign commerce.

The proper functioning of ocean transportation is vital to the export and import business of the United States.

The steamship industry, American and foreign, is a service industry of great mobility. Ships can, and do, go anywhere in the world where business prospects look inviting.

Steamship conferences are associations of steamship lines serving particular trade routes in world commerce and are intended under our law as a means of providing stability for both carriers and shippers through supervised self-regulation among competing carriers on particular routes. Under the conference system, conference members may not only fix freight rates but on occasion agree upon other matters.

To maintain the balance between unbridled competition on the one hand and monopoly on the other, governmental rate regulation is exercised in our domestic economy over such industries as railroads, truck, airlines, public utilities, and domestic shipping. In international ocean shipping, however, it is difficult for any single government to regulate ocean freight rates.

The foreign commerce of the United States is also the foreign commerce of another nation. No government completely controls more than one end of the journey and only a fraction of the carriers are its own nationals. And yet, the principle of "the freedom of the seas" invites the very type of unlimited cutthroat competition which was responsible for the establishment of our governmental regulatory boards and commissions having jurisdiction over domestic industry.

The Shipping Act of 1916 recognized the need for self-regulation of international shipping through steamship conferences and in an attempt to reconcile the concept of free ocean trade with the concept of free competition, that act provided an exemption from the anti-trust laws, provided that there was effective governmental supervision of conference activities. In short, the Shipping Act, 1916, substituted a form of government regulation for untrammelled competition.

One of the principal devices employed by steamship conferences in American foreign commerce is the so-called dual rate system, pursuant to which conference rates are set at two levels. The lower rate is charged to shippers who sign contracts agreeing to ship exclusively on vessels of members of the conference. The higher rate is charged to shippers who do not so agree. Some such effective tying system has been declared by its many proponents to have been the cornerstone of stability in international shipping.

In 1958, as hereafter noted, a Supreme Court decision raised doubts about the legality of the dual rate system under existing law. In addition, congressional investigations have uncovered serious deficiencies in operations of conferences under the Shipping Act, 1916.

In an effort to preserve ocean commerce while doing a minimum of violence to the well-established American antitrust concept, this bill would authorize carriers and conferences of carriers to enter into exclusive patronage contracts with shippers or consignees under certain

conditions requiring approval by the Federal Maritime Board, if the Board finds that the proposed contract system is not intended, and will not be reasonably likely, to cause the exclusion of other carriers from a given trade. The Board must also find that the system will be neither detrimental to the commerce of the United States nor contrary to the public interest, and that it conforms with certain specific statutory standards designed to assure reasonable protection to contract shippers, consignees, independent carriers, and the public.

The bill is also intended to clarify and strengthen the supervisory and enforcement powers of the Federal Maritime Board under the Shipping Act of 1916, as amended.

NEED FOR THE LEGISLATION

On May 19, 1958, the U.S. Supreme Court rendered a divided (6 to 3) decision in the case of *Federal Maritime Board et al. v. Isbrandtsen Company, Inc., United States of America and Secretary of Agriculture*, which held that the use of contract/noncontract rates proposed by the Japan-Atlantic and Gulf Freight Conference was contrary to section 14 third of the Shipping Act, 1916, in that its purpose was to unlawfully restrict trade, and that the system was admittedly instituted to "stifle" and curtail Isbrandtsen competition, thereby making it a retaliatory device declared illegal by Congress.

While the decision rendered only involved a particular contract rate system in the case before the Court, steamship industry representatives declared that the position taken by the Court might, in effect, outlaw the dual rate system in all the 60-odd conferences using it. They feared that chaos would result unless action were taken immediately.

In view of the grave doubts cast by the Supreme Court decision upon the legality of the dual rate system and the possible detrimental results to both American shipping and American foreign commerce, legislation was enacted in the 2d session of the 85th Congress to authorize the continuation in force of any existing dual rate contract arrangement until June 30, 1960.

Immediately upon the introduction of the interim legislation, your committee embarked upon a full-scale study of the operation of conferences and relations with shippers under the 1916 act, with particular reference to the dual rate system. Concurrently, the Antitrust Subcommittee of the Committee on the Judiciary initiated an exhaustive investigation and held comprehensive hearings on monopoly problems in the steamship industry. In view of the magnitude of the paralleling studies of the two committees, it was found necessary in the 2d session of the 86th Congress to extend the temporary legislation for another year, to June 30, 1961, in order to complete the studies and arrive at conclusions for corrective legislation. In the course of its studies and those of the Antitrust Subcommittee of the Judiciary Committee, the Merchant Marine Committee learned that there was very considerable dissatisfaction among shippers and others with the operations of the present tying system, the so-called dual rate system.

One of the greatest causes of shipper dissatisfaction with conferences occurred by reason of the refusal of the conferences to afford rate relief in individual cases and the manner in which certain dual

rate contracts were drawn and enforced. Most shippers agreed with the position of the Alexander committee and the present Merchant Marine Committee that conferences were desirable and that a tying device such as the dual rate system was necessary to preserve their integrity. However, numerous abuses were reported and a number of suggestions were received with respect to possible modification of the present system to make it more equitable as to shippers.

Some of the shipper complaints merited correction, but it must be borne in mind that ocean ratemaking is not an exact science but is dependent upon the evaluation of a number of variables. The shippers are always seeking extended markets, many of which are influenced by ocean transportation charges, whereas there are limits below which the business may not be attractive to the ship operator.

In addition to testimony by shippers and consignees, the Federal Maritime Board testified to the need for strengthening its enforcement powers under the 1916 act.

HISTORICAL BACKGROUND

Steamship conferences first came into existence about 1875 as a result of destructive competition occasioned by the introduction of modern iron ships to replace sailing vessels that formerly served the commerce of the world. The overtonnaging that resulted from the introduction of the new ships gave rise to competitive measures that jeopardized the very large investment of the liner companies in vessels and facilities to serve their trade. In order to meet the situation the companies regularly serving a particular route joined together to fix rates, sailings, and practices. After some experience with this system it was found that it was not effective to assure business to the regular carriers and a device was added whereby shippers were given rebates upon freights previously paid conditioned upon their exclusive use of conference carriers. The evil of this system was the fact that because payment of the rebates was deferred, the shipper could never abandon use of conference vessels without paying the penalty of losing rebates for a very considerable period of time.

In 1909, by reason of abuses that had grown up through the use of the conference system, a Royal Commission on Shipping Rings was authorized to conduct an investigation in Great Britain; and in 1912, the Committee on Merchant Marine and Fisheries of the House of Representatives, under Chairman Joshua W. Alexander, instituted its own investigation.

The British Royal Commission believed that ties to shippers were justified and that the abuses of the deferred rebate system should be tolerated in the interest of achieving a strong conference system. However, the Alexander committee, and the Congress in adopting the committee's proposals, reached a different conclusion. Congress then, as now, was unwilling to tolerate methods involving ties between conferences and shippers without appropriate safeguards and supervision.

As a result of the work of the Merchant Marine Committee, the Shipping Act of 1916 was proposed and enacted. The basic provisions of that act confirmed the necessity for steamship conferences from the point of view of American shippers and the report of the committee emphasized their advantages, including greater regularity

and frequency of service, stability, and uniformity of rates, economy in the cost of service, better distribution of sailings, maintenance of American and European rates to foreign markets on a parity, and equal treatment of shippers through elimination of secret arrangements and underhanded methods of discrimination.

The committee in its report stated that the disadvantages and abuses connected with steamship agreements and conferences as then conducted were inherent and could only be eliminated by effective Government control and it was such control that the committee recommended as a means of preserving to American exporters and importers the advantages enumerated while preventing the abuses complained of.

The Shipping Act of 1916, as recommended by the Merchant Marine Committee, among other things, outlawed the two greatest predatory weapons in the hands of conferences in those days—the use of a fighting ship by means of which the conference was enabled to reduce rates on a particular ship operating in direct competition with an outsider and spreading the resulting losses over all of the members of the conference, and the deferred rebate, which as indicated above placed too great a burden on a shipper who wished to sever his connection with the conference.

The conference, fixing as it does rates and practices, is permitted to exist only as an exception to the antitrust laws of the United States, and such exception is granted only because of the peculiar nature of ocean transportation, and provided certain conditions are met. In order to secure the benefits of such immunity from the antitrust acts, the conferences are required by section 15 of the Shipping Act of 1916 to file all of their agreements with the appropriate regulatory body, which at present is the Federal Maritime Board, and obtain approval of that body. The Board has considerable jurisdiction under the terms of that act to regulate the conferences and see that they observe the restrictions upon which their immunity from the operation of the antitrust acts is predicated.

INVESTIGATION AND HEARINGS

As heretofore indicated, your committee commenced a full-scale study of steamship conferences and relations with shippers immediately following the Supreme Court decision in the *Isbrandtsen* case. In its first phase, the study consisted of an extended field investigation conducted by committee staff, with a view toward discovering the scope of the problems involved and to acquire background information preliminary to holding committee hearings.

During this field investigation the staff members held interviews throughout the country with as many persons as possible concerned with the subject. These interviews were had with individuals and organizations representing a cross section of all elements in our foreign trade community, including importers, exporters, foreign trade groups, freight forwarders, ocean carriers, and conference officials.

Committee hearings on the subject were commenced in February 1959 by the Special Subcommittee on Steamship Conferences and continued at frequent intervals throughout the balance of the 1st session of the 86th Congress. Subcommittee hearings were held not

only in Washington but in New York City, Raleigh, N.C., New Orleans, La., Chicago, Ill., and San Francisco, Calif., in an effort to assure availability of the subcommittee forum to the greatest portion of the foreign trade community in the United States. The printed record of these hearings contains 1,838 pages.

In view of the international character of the steamship conference systems, and the fact that the great majority of conference members are foreign steamship lines with headquarters abroad, it was clear that the committee could not do justice to the study it had undertaken without having an opportunity to learn, firsthand, the problems of foreign maritime nations.

Accordingly, in the fall of 1959, two groups of committee members went abroad to meet informally with government officials of foreign maritime nations and with their nationals who are engaged in ocean commerce as shippers, consignees, or carriers. One group visited the United Kingdom and Western Europe, while the other went to the Far East, visiting Japan, the Republic of the Philippines, and the British Crown Colony of Hong Kong. Through the courteous cooperation of the many foreign government officials and commercial interests, the members gained much information and greater insight into the scope and complexity of the problems of international shipping.

Throughout the course of your committee's investigation, hearings and legislative drafting, there have been maintained close contact and interchange of views with the Antitrust Subcommittee of the Committee on the Judiciary in connection with its paralleling hearings and study of monopoly problems in ocean shipping and the exercise of the regulatory functions of the Federal Maritime Board.

On February 15, 1961, the chairman of your committee introduced H.R. 4299, a bill to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences. The bill, drawn by the committee staff, was designed to bring into focus and set forth in statutory form the major points and issues raised in the course of 2½ years of study and hearings on the subject of steamship conferences. It clearly authorized the use of dual rate systems, but included a number of detailed requirements to be met by both the Federal Maritime Board and carriers or conferences of carriers as prerequisites to the institution and continued use of such systems. Other provisions were designed to meet the problem of rate wars which testimony had indicated are extremely damaging to the American merchant marine and the commerce of the United States.

In the light of information received by your committee in the course of its study, and in the study by the Judiciary Committee, it appeared that the successive regulatory bodies charged with administering and enforcing the regulatory provisions of the Shipping Act of 1916 have failed to give to international shipping practices that supervision which was anticipated by the authors of the 1916 act. It appears that one of the deficiencies of that act was the lack of sufficiently broad visitation powers. While this legislation does remedy in part that deficiency, your committee does not regard such deficiency as fully exculpatory. Accordingly, H.R. 4299 was drawn so as to leave a minimum of discretion in the Board in regard to all matters requiring action under that bill. In view of the history of operations under

existing law, your committee did not feel justified in yielding to the suggestion, advanced from several sources, that the abuses which had been uncovered be corrected or prevented in the future simply by rules and regulations to be promulgated by the Board.

However, the bill does contain provisions to strengthen the Board's enforcement powers by providing that no agreement requiring Board approval shall be approved unless it shall (1) designate a person upon whom service of process may be made within the United States which will be effective against every signatory to such agreement, and (2) contain provisions that every signatory shall provide records or other information, wherever located, required by any proper order of the Board issued under section 21 of the 1916 act.

Beginning on March 20, 1961, your committee held 11 days of public hearings during the period ending April 28, 1961. Testimony was heard from 16 major witnesses representing all major interests, including Government agencies, steamship lines, both foreign and American, steamship conferences, shippers and major shipper organizations, and maritime labor.

The printed record consists of some 574 pages of comments, suggestions, recommended amendments, and colloquy.

During intervals between hearings, the committee staff conferred extensively with officials and staff members of the Federal Maritime Board, the Department of Justice, the Judiciary Committee, and leading representatives of the shipping industry in an effort to analyze the numerous proposed amendments and arrive at acceptable compromises which would accomplish the overall objectives of (1) maintaining steamship conferences with effective tying arrangements, (2) reconciling the conflicting philosophies of the antitrust statutes with the stability desired by both carrier and shipper in ocean transportation, and (3) providing a fair, reasonable, and workable system for the required degree of supervision and regulation of international shipping engaged in the foreign commerce of the United States.

After meeting in executive session to consider H.R. 4299 and proposed amendments, the subcommittee reached agreement, directed the introduction of a "clean" bill (H.R. 6775). Upon further consideration, H.R. 6775 was amended and reported to the full committee.

DISCUSSION OF THE LEGISLATION

Section 1 of the bill amends section 14 of the Shipping Act, 1916, as amended, so as to expressly authorize the use of dual rate systems by conferences, irrespective of the presence or absence of nonconference competition. In addition, it provides, that an individual carrier may utilize a system of dual rates upon the same terms as a conference.

The section specifies that the Board must, prior to authorizing the use of such system find that the system is not intended to and will not be reasonably likely to cause the exclusion of any other carrier from the trade as an independent. The term "exclusion" is intended to include not only the elimination of an independent carrier but also prevention of entry into the trade. Thus, this provision is intended to protect the status of nonconference carriers. In addition, before approving any dual rate system, the Board must also find that it will be neither detrimental to the commerce of the United States nor contrary to the public interest.

Certain other specific standards are prescribed. The contract with the shipper must assure him, on reasonable notice, space on the vessels of the conference to the extent to which it is available; that contract rates once effective may not be increased for 90 days; that the contract can cover only the goods of the shipper over which he has the legal right at the time of shipment to select the carrier; does not require him to divert goods from natural routings not served by the carrier or conference under his contract where more direct carriage is available; and limits damages to actual damages to be determined after breach in accordance with commercial contract law. With respect to the latter point, it is specifically provided that the contract may specify that in the case of a breach by a shipper or consignee the damages may be an amount not exceeding the contract rate, less the cost of handling, on the particular shipment. The reason for the insertion of this provision was to avoid the necessity for litigation on every breach and to provide a measure of damages which, in practice, would be the approximate measure of actual damages and would furnish a specific remedy to the parties without the necessity of resorting to the courts.

The contract shipper may terminate his contract without penalty at any time upon 90 days' notice. Such period affords the shipper opportunity for reconsideration at any time up to termination. In the event of termination, the shipper may, of course, enter into a new dual rate contract without penalty.

The provision authorizing a maximum spread between the rate charged the casual shipper and the exclusive patronage contract signer of 15 percent appeared to the committee, in the light of its experience, as reasonable. The problem was to find a figure that would not act as a penalty upon the shipper who did not choose to limit his shipments to conferences and at the same time would provide sufficient inducement to others to execute such agreements. As stated, it is the belief of the committee, which was shared by carrier and shipper witnesses alike, that the dual rate conference system provides definite advantages in assuring a nucleus of cargo to established carriers, thus enabling them to provide the equipment and service required by the majority of shippers. The contract/noncontract spread is the best practical device to assure these aims and the 15-percent difference in rates is, in the judgment of the committee, fair and reasonable to achieve this end without imposing a penalty on or discriminating against the nonsigner.

In addition to the specific standards, the Federal Maritime Board may require or permit the insertion of additional provisions in the shipper's contract which must not be inconsistent with the terms and spirit of the requirements of the section.

The Board is required to withdraw its approval of the conference contract system if it finds after notice and hearing that the use of the contract tends to cause the elimination from or prevent the entry into the trade of any carrier; is detrimental to the commerce of the United States or is contrary to the public interest.

Upon 90 days' notice to the contract shippers, the conference or carrier may withdraw its use of a dual rate system with respect to any particular commodities without affecting other commodities in its tariff. It may do likewise with respect to any particular port or range of ports. The balance of the system remains unaffected, but if

at any subsequent date the conference or carrier wishes to reinstate the system with respect to the withdrawn commodities or ports, it can do so only with prior approval of the Board just as if the system were being instituted for the first time.

It is the expectation of the committee that a standard form of contract to be utilized by all conferences will be approved by the Board with such riders as may be required to suit the needs of a particular trade. This will greatly simplify the problem of shippers, who of necessity must be members of a number of conferences, with respect to interpretation and application of differing provisions.

One of the most difficult problems with which the committee was concerned was the question of the shipments which would be encompassed by a contract system. Considerable testimony was given to the committee on the different terms and conditions under which shipments can be made. The terms of conference contracts presently in existence vary widely as to the type of shipments covered by the contract. Most are all-inclusive which means that the contract shipper must first offer all of his cargo to the conference. Some shippers complained that a few conferences were extreme in their demands on contract shipments requiring shippers to use conference vessels even if the shipper had no legal right to choose the carrier. On the other hand, steamship companies also complained that unscrupulous shippers would use conference vessels at the contract rates when it suited them or ship by nonconference lines without loss of contract rights merely by changing the terms of sale. It was extremely difficult to reconcile the two opposing requirements of this basic feature of the shipping contract.

Fundamentally, what the committee sought was a provision that specified the good faith of the parties—neither too rigid nor susceptible of manipulation. The committee feels that if a contract shipper is in a legal position to control the routing, good faith requires him to do so. The provision prohibits a conference or carrier from requiring a contract signatory to forgo a sale unless shipment is made via conference vessels.

Section 2 of the bill amends section 15 of the 1916 act. It requires the filing with the Board of all agreements, by whatever terms they are known, by every common carrier by water or other persons subject to the act affecting, fixing, or regulating transportation rates or fares; regulating competition; pooling or apportioning earnings or traffic; specifying ports or otherwise regulating number and character of sailings between ports affecting the volume of freight or passenger traffic to be carried; or providing in any manner for exclusive or cooperative working arrangements.

Such agreements may not be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or operate to the detriment of the commerce of the United States, or be in violation in any way of the act. In addition, the Board shall not approve agreements between carriers or conferences of carriers serving different trades that would otherwise be naturally competitive, unless each carrier or conference of carriers retains the right of independent action. One reason for the insertion of this provision is the present situation existing in the operation of the joint agreement between the Pacific Westbound and Far East Conference whereby each conference

exercises, in effect, a veto power over action by the other conference on specific rate applications by shippers.

This joint agreement has operated to the detriment of shippers by transferring the ultimate decision with respect to their rates from the carriers immediately serving them to the carriers on the other coasts who have no knowledge of or necessarily any interest in the welfare of the particular shipper. Since there are some 25 other agreements between conferences about which no complaint is in the record, it seemed appropriate to the committee to restrict only the abuse reported rather than to strike down other joint agreements that appear to be functioning properly. On the other hand, this is not meant to require the right of independent action on the part of the individual carriers within a single conference.

The bill prohibits representation in conference activities by merchant shippers acting as agents for carriers unless other representation is otherwise unavailable. The purpose of this provision is to prevent undue advantage to a shipper.

Consistent with section 1 of the bill, the Board shall not approve any conference agreement, the probable effect of which is to exclude other carriers from the trade, and any conference agreement must provide that qualified carriers may be admitted on equal terms and may withdraw without penalty upon reasonable notice.

Both the Federal Maritime Board and the Department of Justice have experienced great difficulty recently in connection with investigations of possible law violations in obtaining jurisdiction over foreign corporations doing business in the commerce of the United States. To meet this problem at least part way, the bill provides that the conference agreement must require the designation of a person upon whom process may be served in the United States which would be effective against every member of the particular conference; it also must contain a specific provision that every signatory shall provide records or other information wherever located required by an order of the Board. While the position taken by a number of foreign lines in connection with current investigations is that their records abroad are immune from scrutiny by the Federal Maritime Board, the committee desires to emphasize the fact that those records involve matters in the foreign commerce of the United States and thus are within the jurisdiction of the United States. In order to assure reasonable exercise of this authority, the request for records must contain the minimum notice provisions of the Administrative Procedure Act.

Under the Shipping Act of 1916, it was contemplated that a conference itself would serve as a system of self-policing that would make effective its agreements among the member lines under supervision of the Federal Maritime Board and its predecessor agencies.

In practice, as testimony before this committee and the judiciary Committee established, the self-policing systems in use by the conferences were ineffective and the supervision of the Federal Maritime Board was considerably less than sufficient to insure observance of conference agreements and of U.S. law. Accordingly, the bill contains a provision requiring the inclusion of effective policing provisions in the conference agreement and requires the conference to exercise such policing power effectively on penalty of subsequent disapproval of the agreement. Of course, such policing provisions in nowise diminish

the powers, duties, and responsibilities of the Federal Maritime Board.

In addition, the hearings before this committee established that some conferences were devoting less than a reasonable amount of attention to the problem of their shippers, and that under the 1916 Shipping Act the shippers had incomplete recourse. This bill provides that the failure or refusal of a conference to adopt and maintain reasonable procedures for the consideration of shippers' requests and complaints shall be a ground for disapproval of the agreement or withdrawal of approval.

Foreign carriers have complained from time to time over the degree of regulation imposed by the U.S. Government on its foreign commerce and have pointed out that their respective governments do not exercise similar powers. While this may or may not be so, the fact of the matter is that the United States is concerned with its basic policy of antitrust legislation and that the Shipping Act of 1916 and this act being exceptions to that policy must be surrounded with sufficient restrictions so as not to do it undue violence. If the conferences are prepared to police themselves, the opportunity to do so is given them under this legislation. If they are not prepared to do so, they cannot have the advantage of a conference or a dual rate system. It is for them to choose.

Exception has been taken to the extension of jurisdiction over carriers in the foreign trade by only one of the nations served. The committee believes that this exception is exaggerated. Under existing law, every common carrier must file annual reports (MA-172) containing detailed and voluminous operating data. They must also file forms MA-7801 and MA-7802 for every voyage, showing cargoes loaded and discharged. Since 1935, they have been compelled to file their rates on all outbound cargo. They can be required to file a memorandum under section 21 as to various operating activities. Your committee feels that the additional requirements of the new legislation are but modest extensions of these requirements to make the supervised self-regulation more effective.

The act departs from previous law in that it requires the filing of rate increases on 30 days' notice unless the Board permits filing on lesser notice. Decreases become effective immediately upon filing and publication. The filing provisions apply to all ocean carriers and specifically provide that the only rate to be charged is the rate filed with the Board. The filing requirements of passenger fares were considered by the committee, and in view of the complicated mechanical problems in booking passengers it was decided to merely require the filing of the tariff fares and changes in such tariffs. It should be noted, however, that although changes and reductions in rates for transportation of property are prohibited without prior approval, passenger fares are not so regulated.

Existing lawful dual rate agreements may remain in effect for up to 1 year after enactment of this act in order to give the conferences time to bring their systems into conformity with its provisions.

Since international shipping business by its very nature involves competition with carriers not members of the conference who are free to charge such rates as they may see fit, provided they are properly filed with the Maritime Board, it frequently becomes necessary for the conference to meet such competition by reduction of rates.

For that reason the bill would permit a carrier or conference of carriers to reduce rates for the purpose of meeting competition, provided that it is exercised in good faith and not for the purpose of destroying competition or eliminating a competitor. To "meet" competition, a carrier or conference may not only equal the lower rate of a competitor but may in certain circumstances go below it, provided the action is not intended to destroy competition but to meet it. This is a conventional distinction in antitrust law. On the other hand, it is specifically made unlawful for members of a conference or a carrier to engage in predatory rate cutting. Such activity is made punishable by a penalty of up to \$1,000 per day for each carrier party to such arrangement.

Insofar as possible, the intent of the bill is to place individual common carriers by water under the same disabilities and to accord them the same privileges as are enjoyed by conferences.

The provisions applicable to single carriers as well as conferences, with respect to rate filing, the establishment of a dual rate system, and the requirement that an individual be designated for a service of process in the United States are all designed to equalize the competition between conferences and independent carriers as far as possible.

The Department of Justice testimony on the legislation was generally unfavorable. While its position is consistent with the antitrust policy of the United States, it fails to take into account the peculiar nature of the particular business involved. The ocean steamship industry is unique among transportation services in a number of respects. In general, the investment in an individual ship is considerably larger than a corresponding investment of a trucking line, barge line, or railroad for the same amount of service. Whereas the latter lines are strictly controlled with respect to routes, types of cargo, rates, and methods of service by the appropriate governmental regulating agencies, the international nature of ocean commerce makes it impossible to impose similar restraints.

Because of the peculiar mobility of ships, it is entirely possible for a shipowner to place his vessel in a particular service on relatively short notice and without hindrance from any law or regulation of any nation. As a result, the only method that has proved practical to assure continuity of service on a particular route with a degree of stability of rates, in view of the very large investment required in the establishment of a regular service, is by providing specific inducements to shippers to utilize the services of the particular line or lines regularly serving that route. The conference system, with an appropriate tying device, has proven to be the most effective method, both from the point of view of the carrier and the shipper. In the course of the hearings before the committee, virtually all of the witnesses, both carrier and shipper, testified that they desired the continuance of the dual rate contract system and that some such system was virtually a necessity for their continued successful operation. The intent of the bill is to meet the complaints of the shippers with respect to requirements of their contracts so as to provide them more protection and at the same time plug up certain loopholes in the relations between conferences and Government to assure greater observance of law for the benefit of both shipper, carrier, and the public.

The committee believes that the present bill represents a minimum but necessary deviation from the concepts of the antitrust law.

From many years of experience, the Merchant Marine Committee, as long ago as 1912, recognized the necessity for a tying device and the necessity for a conference system in the international ocean commerce of the United States. The committee believes that the present bill with its built-in safeguards against abuse by the conference in its relation to shippers and its requirements with reference to submission of data to the Federal Maritime Board represents a workable system for the benefit of the commerce of the U.S. shippers, and the American merchant marine.

CONCLUSION

Throughout the course of the hearings, the committee has been confronted with the problem of endeavoring to reconcile the conflict between our traditional antitrust concepts and the needs of our foreign waterborne commerce. Witnesses before the committee have been practically unanimous in their support of the conference system. A majority of witnesses have support the dual rate system. The shippers on the one hand look to this system to provide stability of rates, and for assurances that their transportation costs are identical with those of their competitors shipping within the same conference. On the other hand, the owners and operators of oceangoing vessels flying the flag of the United States find that the conferences and the dual rate system offer the only means by which the American lines can be assured of continued patronage in our foreign trade.

The hearings of the committee have made it quite clear that our traditional antitrust concepts cannot be fully applied to this aspect of international commerce. Your committee has concluded that any attempt to effect regulation of this commerce in a measure comparable to that applied to our domestic commerce would be highly detrimental to our essential American-flag merchant marine. Accordingly, the committee has decided that it should encourage the continued maintenance of effective conferences and that, within safeguards, it should authorize and direct the Federal Maritime Board to approve exclusive patronage arrangements without which conferences might well become ineffective.

The committee recognizes, however, that overregulation of the American trade may result in shippers in other areas of the world being put in a better competitive position. Thus your committee has rejected certain other proposals for rate and other controls and have only approved the minimum regulation felt necessary to protect the various interests.

The recommended safeguards will, in the opinion of the committee, give ample protection to the shippers. Furthermore, they will permit the use of an exclusive patronage agreement to meet competition but not to be used as a predatory device.

DEPARTMENTAL REPORTS

Your committee requested reports on the original bill, H.R. 4299, from the Department of Commerce, the Department of State, the Department of Agriculture, the Department of Defense, the Depart-

ment of Justice, and the Comptroller General of the United States. The texts of such reports received by your committee were carefully considered during the deliberations on the legislation.

Particular attention is called to the report of the Department of Commerce in which, in addition to comments upon the provisions of H.R. 4299, a number of other amendments to the Shipping Act, 1916, were recommended as being—

designed to strengthen and improve the Act as a regulatory instrument.

Without approving or disapproving such additional provisions, your committee took no action thereon feeling that their consideration should more appropriately be in connection with a separate legislative measure.

While not submitting detailed written comments on the provisions of H.R. 4299, the Department of Justice presented thorough testimony during the committee hearings.

The departmental reports on H.R. 4299 are as follows:

THE SECRETARY OF COMMERCE,
Washington, March 20, 1961.

HON. HERBERT C. BONNER,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request of February 2, 1961, for the views of this Department with respect to H.R. 4299, a bill to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

Subject to the considerations hereinafter mentioned, and the amendments hereinafter proposed, the Department and the Federal Maritime Board recommend favorable consideration of the bill.

SECTION 1 OF THE BILL

Section 1 of the bill would amend section 14 First of the Shipping Act, 1916, to permit the use of dual rate or exclusive patronage contracts by steamship conferences or individual steamship companies, provided the terms of such contracts are approved by the Federal Maritime Board and contain specified criteria set forth in the section.

Under the bill, the Board may approve the use of such contracts if it finds they are not intended, and will not be reasonably likely, to cause the exclusion of other carriers from the trade, and that they contain the following: (1) a guarantee of space to the shipper; (2) a guaranteed rate for a fixed period; (3) that only goods over which the shipper has the power to designate the routing are covered by the contract; (4) that the shipper shall not be required to ship by unnatural or indirect routes; (5) that damages for breach of contract shall be determined by principles of contract law; (6) the shipper may cancel his contract upon a rate increase; (7) that the shipper may cancel his contract if the carrier who normally transports most of his goods withdraws from the contracting conference; (8) that the contract expires without penalty at the end of its term unless explicitly renewed; (9) the contract provides a spread between ordinary rates and rates to the exclusive patronage shipper, which the

Board finds to be reasonable; and (10) other provisions which the Board may require.

The Federal Maritime Board favors the enactment of permanent legislation which would authorize the use of dual rate or exclusive patronage contracts. The use of such contracts has been held by the Supreme Court in *F.M.B. v. Isbrandtsen Co., Inc.* (356 U.S. 481, 1958) to be illegal under most circumstances. Since then, legislation legalizing such contracts has been enacted and reenacted by Congress. The interim legislation will expire on June 30, 1961.

The Board believes that conferences are needed if stability in rates and services is to be maintained in the foreign trade. We further believe that if the conferences are to be continued they must have the power to assure themselves the loyalty of merchants upon whose trade they depend. It is our belief that the only workable method of achieving such purpose and which is not at the same time contrary to the American concept of fairness in the dual rate system. We do not look with favor upon proposals for revival of deferred rebates as they existed before their prohibition in the Shipping Act, 1916. We believe that the exclusive patronage system appropriately regulated to insure fairness and mutuality of consideration between the shipper or consignee on the one hand, and the conference of carriers on the other, is the proper instrument. Accordingly, we favor section 1 of the bill in principle. We do not feel, however, that the legislation should lock in detailed requirements which must be included in such exclusive patronage contracts, because situations may arise which cannot be envisioned at this time. In our opinion such requirements should be set forth as matters which the Board should consider in issuing the rules and regulations provided for in section 5 of the bill. We believe that such a provision will better insure fairness to shippers and carriers under all conditions. In addition, we recommend the following changes in these standards:

(1) At page 2, line 5, we recommend that the words "otherwise lawful" be stricken. It is our belief that the Board should restrict itself to the consideration of matters within its own competence, viz, matters embraced within the Shipping Act, 1916, and related statutes. If the "otherwise lawful" language remains, we fear that circumstances may arise where an arrangement presented for approval by the Board and not protested by any person is in some fashion violative of some State or other statutes not connected with ocean commerce, but this fact is not brought to the attention of the Board. As any approval granted by the Board to dual rate arrangements only makes such arrangements lawful with regard to the Shipping Act, 1916, we believe that the Shipping Act and the general antitrust policy of the United States are matters to which the Board should give primary emphasis in approving or disapproving any dual rate arrangement.

(2) At page 2, lines 7 through 10, we recommend that the words "is not intended, and" be deleted. In one sense, any competitive device used by a carrier might be construed as being intended to exclude competitive carriers to some degree. Presumably, all businessmen would be happier with less competition. We therefore believe that requiring the Board to pass upon whether a particular arrangement might be motivated to some extent by a desire that some competitors leave the trade would be inadvisable. Any arrangement tying a shipper to a

particular carrier or carriers will by its very nature exclude other carriers from at least some traffic. A carrier's choice whether to remain in the trade or to direct its efforts elsewhere could depend on many factors, including the rather subjective matter of how much determination the carrier has to compete efficiently and aggressively. We respectfully suggest that the other numbered safeguards of the section furnish ample protection against undue exclusion of competition in the ocean trades.

(3) At page 2, line 14, we recommend that the phrase "which period shall be" be inserted between the words "period" and "subject". We make this recommendation in order that the statute will clearly reflect that the period of the guaranteed rate, rather than the general rate level, shall have to be approved by the Board.

(4) At page 2, line 16, we recommend that the following language replace that which currently follows numeral (2): "covers those goods as to the shipment of which the shipper has the power to select the carrier." As worded in the bill, this provision would limit the dual rate system to the coverage of only the goods "of the shipper". This introduces the question as to who has title to the goods, a matter which has proved troublesome in past dual rate litigation. We believe that whether a signatory shipper is obligated under his contract to ship with the signatory carrier should not hinge upon a determination under the law of sales as to who has title. The revision which we suggest is designed to make the shipper's obligation depend upon whether he has in fact the power to select the carrier, rather than whether legal title might be vested in him at the time the goods are presented for carriage. We are also recommending below that language be added to this section which would include both consignors and consignees within the definition of "shipper."

(5) At page 2, line 22, we recommend that the following words be substituted for those currently following the numeral 5: "Limits damages recoverable by breach by either party to two times the difference between the ordinary rates and rates charged for exclusive patronage shippers". As this provision currently stands, damages would be determined according to the principles of contract law. As we understand the contract damages in such circumstances, it would be very difficult for a shipper or a carrier to prove actual damages where the other party has violated his contract. We believe that fixing liquidated damages at two times the difference between the contract and noncontract rates would be equitable for both shipper and carrier, and would avoid the difficulties of proof present under such circumstances.

(6) At page 3, lines 3 and 4, we recommend that the words "customarily carried the major share" be stricken, and the words "during the contract period carried more than 50 per centum" substituted therefor. We view the purpose of this clause as being to permit a shipper to continue to do business with the carrier of his preference, if such carrier leaves a conference where a dual rate contract is in effect. We believe that the language herein recommended would accomplish this. The bill as it now stands could be construed so as to permit a shipper who has given as little as 20 percent of his business to a particular carrier to avoid his contract obligations if that carrier

leaves the conference and no other carrier has carried more than 20 percent of his goods.

(7) We recommend that the following words be added at the end of this section: "For the purposes of this section, the word 'shipper' shall include consignors and consignees". Many of the exclusive patronage contracts currently in effect are between consignors, as well as consignees, and carriers. The recommended language would make it clear that such arrangements may be continued, and shall be governed by the safeguards erected in the proposed section.

CLARIFICATION WITH RESPECT TO AGREEMENTS WHICH MIGHT BE CONSIDERED TO REGULATE COMPETITION OF PARTIES WITH NONPARTIES

In the *Federal Maritime Board v. Isbrandtsen* (356 U.S. 481), the U.S. Supreme Court held that a dual rate agreement among members of the Japan-Atlantic and Gulf Freight Conference, which the Federal Maritime Board had found was necessary to enable the conference to meet the competition of Isbrandtsen (who was not a member of the conference) was unlawful, because the "resort to" clause of section 14 Third of the Shipping Act, 1916, prohibits approval of agreements, under section 15 of that act, which are intended to regulate the way in which parties to the agreement will compete against nonparties.

Three members of the Court dissented, and in their dissent stated that the effect of the decision is to outlaw all dual rate agreements, because the purpose of dual rate agreements is to regulate the way in which parties to the agreement will compete against nonparties.

The majority of the Court indicated in their opinion that the absence of the word "unjustly" in the "resort to" clause was the reason they interpreted that clause as they did.

Our understanding is that the bill is intended to authorize approval of section 15 agreements which are intended to meet the competition of nonparties if such agreements comply with the standards of the bill. We recommend therefore that action 14 Third be amended by inserting before the word discriminating the word "unjustly."

SECTION 2 OF THE BILL

This section would amend section 15 of the Shipping Act, 1916, by enlarging and clarifying the Board's powers over agreements filed thereunder. In brief, these proposed changes in section 15 would prohibit the approval of certain types of agreements; would require that all agreements contain certain provisions designed to facilitate the Board's supervision thereof; would exempt more rate changes from the requirement of advance Board approval; and would require that the Board disapprove conference rates found to be so unreasonably high or low as to be detrimental to any segment of the commerce of the United States. We recommend the following changes in this section of the bill:

(1) At page 4, line 6, we recommend that the words "notice and hearing" be stricken, and the following words be inserted in their place: "publication of notice in the Federal Register and affording to all interested parties an opportunity for hearing." As the bill is

now worded, it might be construed so as to require a hearing in connection with every agreement without regard to whether any person having a bona fide interest requests a hearing. We are in full accord with what we believe to be the intent of this provision; that is, that there should be an opportunity for interested parties to be heard, and we believe that our recommended language will accomplish this.

(2) At page 4, lines 12 and 13, we recommend that the words "any segment" be stricken. This provision of the bill provides that the Board must disapprove any agreement "found to operate to the detriment of any segment of the commerce of the United States." We are uncertain as to the intended meaning of "any segment of commerce" as here used. The current language in section 15, and which is repeated in the bill, which prohibits the approval of agreements found to be "unjustly discriminatory or unfair as between carriers, shippers, exporters, importers or ports" would seem to be sufficient protection for "segments of commerce" and avoid any new controversy over the meaning of the word "segment."

(3) At page 4, lines 15 and 16, we recommend that the words "that it affirmatively finds to be in the public interest" be stricken. In conformity with other similar statutes, such as the Aviation Act of 1958, we believe that, if a public interest standard is to be applied by the Board, it should be phrased in terms of permitting the approval of agreements which the Board does not find to be adverse to the public interest. See 49 U.S.C. 1382(b). Requiring a positive finding in favor of the public interest would prevent carriers from operating under arrangements which, although not meriting disapproval under the standards of the statute, could not be shown to positively contribute to the public interest.

(4) At page 4, line 18, we recommend that the clauses following the numerals 1 and 2 be stricken, and the following language substituted therefor: "(1) between conferences of carriers, or (2) between carriers serving different ranges of ports that would otherwise be naturally competitive: *Provided, however,* That a carrier who serves two or more competitive ranges of ports may join a conference for each of the ranges he serves or, (3) which includes ports not served either directly or by transshipment by any of the signatories even if otherwise within the general trading area, or (4) which permits signatories not serving either directly or by transshipment a particular port to vote in matters affecting such port." (The clauses following (1) and (2) in the bill as it now stands would, of course, have to be renumbered.) We further recommend that the following provision be added at the end of this paragraph of the bill: "For purposes of this section, a carrier shall be considered as serving a port when he demonstrates a willingness to call at such port whenever reasonable quantities of cargo are offered him." We construe clauses (1) and (2) of this paragraph of the bill as it now stands to be designed to prohibit carriers from participating in rate fixing and other competition restricting activities affecting ports or trades which they do not serve. As these provisions appear in the bill, however, they could be construed so as to prevent carriers who offer service between two U.S. coastal areas and a single foreign area from joining a conference. Also, many carriers for operating reasons offer service between general ranges of ports, but do not regu-

larly call at every port within the range. This is particularly true of the carriers with smaller fleets. For this reason, we have recommended the foregoing amendment so as to permit such carriers to participate fully in conference matters relating to so much of the full trading area as they in fact offer service to.

(5) At page 4, line 25, we recommend that the words "actions or votes" be substituted for the word "activities." In a number of small, mostly foreign, ports the only qualified or available persons to act as port agent for carriers calling at the port may be persons who also ship cargo. These persons generally would book cargo of other shippers and arrange for the berthing of vessels and perform related services. As this provision of the bill now stands, it might be argued that such services are embraced within the phrase "conference activities." We believe that the substituted words "actions or votes" would be less open to such construction.

(6) At page 5, line 2, we recommend that the phrase following the numeral 5 be stricken, and the following language substituted therefor: "fails to provide reasonable terms and conditions for the admission of all other qualified carriers in the trade." We are fully in accord with the intent of this provision that all conferences be open to all carriers; however, we believe that once a conference is established, the members should be permitted to impose some reasonable terms for the admission of other carriers, including, for example, the payment of a reasonable membership fee to help defray the costs of the conference.

(7) At page 5, line 4, we recommend that the entire paragraph running through line 10 be stricken. We are in favor of the objectives of this paragraph, namely, that carriers appoint agents for service of process and furnish the Board with documents located outside of the United States. However, we believe that such requirements should be made of all carriers in the foreign commerce and not restricted to conference members. Therefore, we recommend the enactment of a new and separate section of the Shipping Act, 1916, to provide for the appointment of agents for the service of process and also recommend an appropriate amendment to section 21. (See recommended section 13 to the bill in attachment hereto.)

(8) At page 5, lines 11 and 13, we recommend that the words "or cancellation" and "and cancellations" be stricken. While these words appear in section 15 as it currently stands, we believe that little purpose is to be served by Board review and approval of cancellations of agreements. A conference consisting of persons who do not desire to be bound to each other would not seem to be in the public interest.

(9) At page 5, line 18, we recommend that the words "tariffs of" be stricken. We construe the purpose of this provision to be that individual rate changes by conferences need not be approved by the Board. The difficulty which we find with the inclusion of the words "tariffs of" in this provision stems from the fact that in many instances conferences may insert rules and regulations in their tariffs which have the effect of restricting competition in a manner not reasonably to be inferred from the basic agreement. We therefore suggest that merely the words "rates, fares, and charges" be used.

(10) At page 5, line 18, we recommend that the parenthetical matter running to line 21 be amended by inserting after the word "hereof" in line 21 the words "which involve a change in the spread between

such rates." As we construe this provision, Board approval of individual rate changes under a dual rate system would be required. It is our belief that changes in rates under a dual rate system should be afforded the same treatment as the rate changes of carriers not using a dual rate arrangement—that is, mere changes in rates without any change in the basic dual rate system, such as a change in the spread between the contract and noncontract rates, should not require prior Board approval. The requirement of approval of mere rate changes by conferences employing dual rates would create a severe administrative burden, and might imply a requirement that the Board actually determine the reasonableness of the level of such rates.

(11) At page 5, line 23, we recommend that the words "may, in the Board's discretion, be permitted to" be stricken, and the word "shall" be substituted therefor. It is our belief that, if conference rate changes comply with the other requirements of this provision, they should go into effect. The requirements that the Board exercise its discretion over each such rate change would create a severe burden and imply a requirement that the Board review and determine the reasonableness of the level of such rates.

(12) At page 6, line 2, we recommend that the comma and all after the comma through the word "months" in line 5 be stricken. In lieu of this provision, we recommend that a new section 6 be added to the bill to read as follows: "SEC. 6. Notwithstanding the provisions of sections 14 First and 15 of the Shipping Act, 1916, as amended by this Act, all rates and agreements which are lawful under the Shipping Act, 1916, immediately prior to enactment of this Act, shall remain lawful for one year after enactment of this Act unless disapproved, canceled or modified by the Board pursuant to the provisions of the Shipping Act, 1916, as amended by this Act, within that year." This substituted language is suggested in order to preserve the status quo for a reasonable period during which carriers shall bring their practices into conformity with the newly enacted standards. In view of the large number of agreements under section 15 which would require detailed review following the enactment of the bill, we believe that a period of 1 year, rather than 6 months, would be a somewhat more realistic time for the accomplishment of this task.

(13) At page 6, line 17, we recommend that the language from line 6 through line 17 be stricken. While we favor what we believe to be the objective of this provision, namely, the placing of U.S. importers and exporters on a competitive parity as to freight rates with foreign importers and exporters, we believe that the solution proposed in the bill is unworkable. In order for governmentally fixed rates to abide by the constitutional prohibition against the taking of property without just compensation, a rate must have some relation to the costs of the carrier. As proposed in the bill, the Board would fix rates in the foreign commerce so as to avoid detriment to the commerce of the United States. In a single conference it is not unusual to have 20 member lines operating vessels of 10 or 15 different flags, all having different costs of operation, precise information as to which is not in the possession of the Board. For the Board to attempt to fix a single rate or maximum and minimum rates which would be reasonable for all the conference members would, we believe, be impossible. As we

understand this proposed section, it would call for an adjustment of rates between the United States and a given foreign market so as to put them into parity with the rates between a foreign port and the same foreign market, where the foreign-to-foreign rates are lower than the U.S.-to-foreign rates. The trade in which the lower foreign-to-foreign rates prevail (which prevent U.S. exporters from effectively competing with foreign exporters) might be served by vessels of a flag or flags which have lower costs than any of the vessels serving the U.S. trade. Thus, to establish, under such circumstances, a rate which would not be detrimental to the commerce of the United States could result in the establishment of a rate lower than the actual costs of the carriers serving the U.S. trade.

(14) At page 7, line 3, we recommend that the last paragraph of the section be stricken, and the following language substituted therefor: "Whoever violates any provision of this section shall be liable to a civil penalty of not more than \$1,000 for each day such violation continues." Past experience has indicated that specific instances of violations of section 15, like instances of violations of other statutes, present wide ranges of culpability. We therefore believe that the penalty provision of this section should be stated in terms of a maximum rather than a fixed amount.

SECTION 3 OF THE BILL

This section would add a new subsection to section 13 of the Shipping Act, 1916, which would impose requirements relating to the filing of rates and tariffs by common carriers by water in the foreign commerce similar to those imposed upon common carriers by water in domestic commerce by section 18 of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933. These requirements are generally that rates must be posted and filed with the Board 30 days prior to their effective date; that terminal and other accessorial charges must be stated separately; that carriers will not charge a different rate than that filed with the Board and posted publicly; and that the Board may establish regulations relating to the form of tariff which shall be used by such carriers. The amendment further provides a civil penalty of up to \$1,000 per day for the violation of this subsection.

The Department and the Board endorse this section. In the interest of clarification, however, we recommend the following change in this section of the bill:

(1) At page 7, line 16, we recommend that the words "between all points" be stricken, and the following words substituted therefor: "to and from United States ports and foreign ports". We do not believe that carriers should be required to file with the Board their rates for carriage between one foreign port and another foreign port. As the section now stands, there is some question regarding this matter.

(2) At page 8, line 22, we recommend that the following language be inserted after the word "section": "nor shall any new or initial rate of any common carrier by water in foreign commerce or conference of such carriers be instituted". It is the belief of the Department and the Board that the 30 days advance filing and posting requirement should apply to initial and new rates, as well as to rate

changes. The suggested language is designed to accomplish this objective.

SECTION 4 OF THE BILL

This section would add two new subsections to section 19 of the Shipping Act, 1916. The first subsection would empower the Board to defer the effective date of any proposed rate change by a conference or individual carrier for a period of not to exceed 7 months where the change appears to be motivated by a desire to drive another carrier from the trade. Provision is made for the carrier whose rate change has been suspended to be heard. The second subsection would prevent the increase of a rate previously reduced after the expiration of the 7-month suspension period unless the Board finds that such increase is caused by changed conditions other than the elimination of competition. The Board generally favors this provision of the bill and believes the prohibitions therein would apply equally to conference and nonconference carriers. However, the 7-month deferral provision may need further consideration, and the Board may wish in the near future to submit additional comment thereon. It should be noted that here the intent of the carrier or carriers effecting the rate change is the operative fact. However, the objective of this section is, as we understand it, to prevent rate wars, where the intent of the rate-reducing carrier becomes a primary consideration.

ADDITIONAL RECOMMENDATIONS OF THE DEPARTMENT AND THE BOARD

In addition to the points covered by H.R. 4299, it is believed that any legislation amending the Shipping Act should include certain further provisions designed to strengthen and improve the act as a regulatory instrument. These additions are generally of a procedural nature, and are believed to be necessary for the Board to have the objective powers essential to carrying out its responsibilities under the regulatory provisions of the Shipping Act. Accordingly, the Department and the Board make the following recommendations:

1. The Board should be given the power to enter cease and desist orders of an interlocutory nature prior to the completion of full evidentiary hearings. In addition, there should be provision for enforcement of such orders in the Federal district court.

This recommendation is designed to enable the Board to act more swiftly in protection of the public interest where acts of questionable legality are put into issue before the Board, either by sworn complaint of an injured party, or by the Board on its own motion. Sometimes the questionable acts may have an important and adverse impact upon certain persons of interests. It is believed desirable that, instead of awaiting the termination of full administrative proceedings, including hearing, decision by the examiner, exceptions thereto, argument before the Board, and decision by the Board, the Board should have the power to maintain or restore the status quo upon a prima facie showing of irreparable damage, substantial injury to the public interest, or little likelihood of success on the merits. In this respect, the Board would in general be acting in a fashion similar to that of a court of equity in the disposition of applications for interlocutory injunction. However, unlike a court, the Board does not have the power to enforce its own orders; consequently, for the enforcement

of such orders, such authority would reside in the Federal district courts having venue, sitting as courts of equity.

2. The Board should expressly be given general power to adopt rules and regulations necessary to carry out its duties under the Shipping Act, 1916.

The Board is presently vested with several particular grants of rulemaking power (e.g., 46 U.S.C. sec. 816; 46 U.S.C. sec. 876). Moreover, by section 204 of the Merchant Marine Act, 1936 (46 U.S.C. sec. 1114), it is vested with power to adopt all necessary rules and regulations to carry out the powers, duties, and functions vested in it by that act. It is believed that this provision of the Merchant Marine Act, 1936, vests in the Board general rulemaking powers with respect to not only the 1936 act, but also with respect to the Shipping Act, 1916, since the 1936 act expressly transferred to the Board's predecessor, the Maritime Commission, all of the powers, duties, and functions which had been vested in earlier agencies under the Shipping Act, 1916. However, no judicial decision has clearly disposed of this point. While the provisions of section 204 of the Merchant Marine Act, 1936, may make this recommendation unnecessary, it is believed preferable that the Shipping Act should expressly include its own rulemaking authority so as to clarify the point beyond doubt.

3. The Board's information-gathering powers under sections 21 and 27 of the Shipping Act, 1916, should be clarified and expanded so as to give the Board express power to inspect and to order the production of documents and information relevant to its responsibilities. In addition, all carriers and conferences should be required by statute to appoint and maintain agents in the United States upon whom may be served any process authorized by the Shipping Act.

The effectiveness of the substantive provisions of the Shipping Act depends directly upon the policing and investigative powers available to the Board. Unless the Board can secure the relevant facts, it is unable to inaugurate and carry through to a conclusion proceedings of enforcement. At the present time, the Board's power to require the production of documents located abroad is under attack in the Court of Appeals for the District of Columbia Circuit.¹

The transactions accomplished abroad in the shipment of goods to and from the United States, and records of such transactions which are maintained abroad, are absolutely and essentially relevant to the substantive requirements of the Shipping Act. Violations of the act can be completely consummated abroad, and if recorded at all, can be recorded only in files kept by a carrier at its offices in a foreign country. Unless the Board is to have the power to reach these facts, the substantive provisions of the Shipping Act could be violated without fear of detention.

For the similar reasons, the Board should have access to, and the power to inspect, records of carriers and conferences which are maintained in the United States. Such power would be similar to that now vested in the Interstate Commerce Commission under sections 20(6), 220(d), 313(f), and 412(d) of the Interstate Commerce Act (49 U.S.C. sec. 20(6), 320(d), 913(f), and 1012(d)). A similar power is also vested in the Federal Trade Commission by 15 U.S.C. section 49.

¹*Montship Lines, Ltd., et al. v. F.M.B. & U.S.A.*, No. 15,783, et al.

4. Section 22 of the Shipping Act, 1916, should be amended so as to authorize the filing of complaints against any person who has violated any section of the act.

The opening paragraph of section 16, Shipping Act, 1916, prohibits any shipper, consignor, consignee, forwarder, broker, or other person, or their employees or agents to obtain transportation by water for property at less than the applicable rates or charges by means of any fraudulent or unjust or unfair device or means. Section 16, second, prohibits a carrier from allowing any person to obtain transportation at less than the regular rates through any fraudulent or unjust or unfair device or means. Section 22 provides that "any person may file with the board a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act" (other persons subject to this act being defined in section 1 of the act as forwarders and persons furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water).

Thus, while the act establishes a procedure before the Board whereby a carrier may be complained against for violating section 16, second, it does not authorize any complaint against a shipper, consignor, etc., who violates the opening paragraph of section 16. Where a third person is injured by a violation of section 16, by which a shipper obtains cheap transportation by means of a false report of weight and the carrier connives thereon, the injured person might be required to proceed against the carrier under section 22 of the Shipping Act, 1916, in a complaint filed with the Board, and against the shipper by a complaint filed in the Federal courts. Similarly, where proceedings are undertaken by the Board on its own motion, as authorized by section 22, the Board should have the power to bring such proceedings against shippers who violate section 16 just as it has the power to proceed against carriers who violate that section.

5. The immunity provision of section 28 should be limited so that immunity from prosecution may be claimed only where the person to whom such a subpoena is addressed expressly claims the right to remain silent.

Section 28 as now worded has been construed² to give a very broad immunity to any natural person who has been subpoenaed in any proceeding based upon, or growing out of, any alleged violation of the Shipping Act whether or not that person claims the right to remain silent. In order to make the granting of immunity from prosecution less freely available, it should be granted only in cases where a subpoenaed witness expressly invokes his right to remain silent. Recent legislation in similar vein requires that a person must claim his immunity.

6. Section 27 should be amended and clarified so that it expressly authorizes the Board's hearing examiners to sign subpoenas.

Subpoenas signed by Board hearing examiners have been challenged, and although in the most recent case of this type, the validity of the subpoena has been sustained,³ there is outstanding a decision of a Federal district court to the contrary.⁴

² See *U.S. v. Niarchos*, 125 F. Supp. 214 (1954).

³ *John Lee v. F.M.B.*, 281 F. 2d 577 (9 cir., 1960).

⁴ *U.S. Maritime Commission v. Hodgson* (S.D.N.Y., 1948), reported at 3 Pike & Fisher, Ad. Law 44 C. 15-1.

7. An appropriate provision should be inserted in the Shipping Act to authorize the Board to conduct preliminary investigations and in aid thereon, to exercise the power of subpoena, to swear witnesses, and to take and record testimony antecedent to the filing of any complaint on the Board's own motion.

The purpose of this provision is to enable the Board to conduct proceedings analogous to those of a grand jury. A somewhat similar procedure is followed by the Federal Trade Commission under the authority vested in it in title 15, United States Code, section 49 and other sections of the Federal Trade Commission Act. While that act authorizes the Commission to file complaints charging violations thereof (15 United States Code, section 45(b)), other sections of the act authorize the Commission to invoke its powers in investigation of possible violations. At present, the statute does not clearly authorize the Board to exercise its power of subpoena in advance of a formal allegation of a violation of the act.⁵ Where the Board becomes apprised of indications of a violation of the act, its investigation into the matter would be materially aided if it clearly were vested with the power to issue the subpoenas compelling the attendance of witnesses and the production of papers before a properly designated investigating officer.

3. The Board should have the power to delegate to single Board members or to staff officers the authority to pass on such matters as special permission under the Intercoastal Shipping Act, 1933, to file rates on less than full statutory notice. The Board, by directive, would establish the policy.

Attached are proposed amendments which would carry out these additional recommendations.

The Bureau of the Budget advised there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

_____, *Secretary of Commerce.*

ADDITIONAL AMENDMENTS TO H.R. 4299 PROPOSED BY THE FEDERAL MARITIME BOARD AND THE DEPARTMENT OF COMMERCE

SEC. 7. Section 21 is amended to read as follows:

"SEC. 21. The Board may require any common carrier by water or conference of such carriers, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to produce or to file with it, any report, record, book, paper, or other document or tangible thing, or a true copy thereof, whether or not located in the United States, or to file answers in writing to specific questions, appertaining to the business of such carrier or other person subject to this Act, the same to be produced or filed in the form and at the time and place the Board prescribes, and to be under oath whenever the Board so requires. The Board or its duly authorized agent or agents shall at all reasonable times have the authority, upon demand, to inspect and copy any such document or thing. Who-

⁵ Sec. 27 provides that "for the purpose of investigating *alleged violations of this Act*, the board may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence * * *." [Emphasis added.]

ever fails to comply with any requirement or demand under this section shall be subject to a civil penalty of not more than \$100 for each day of such default. Whoever willfully falsifies, destroys, mutilates, or alters any such document upon conviction to a fine of not more than \$10,000 or imprisonment for not more than five years, or both such fine and imprisonment."

SEC. 8. Section 22 is amended to read as follows:

"SEC. 22. (a) Any person may file with the Board a sworn complaint setting forth any violation of this Act by any person and asking reparation for the injury, if any, caused thereby. The Board shall serve a copy of the complaint on the person accused, who shall within a reasonable time specified by the Board satisfy the complaint or answer it in writing. If the complaint is not satisfied, the Board shall conduct a hearing upon it and determine whether a violation has occurred. And if it determines that a violation has occurred, it may issue and serve upon the offender an order requiring that he cease and desist from such violation. The Board, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

"(b) The Board shall investigate violations of this Act or of any rule or regulation issued thereunder in such manner and by such means as it deems proper, and may delegate to an office or officer of the Board the authority for conducting such investigations. Such office or officer may utilize any and all means available to the Board for the purpose of gathering information or evidence. Whenever it appears that a proceeding before the Board in respect of any alleged or suspected violation of this Act or rule or regulation thereunder would be in the public interest, such office or officer shall file with the Board and serve upon the person accused a sworn complaint setting forth the nature of the offense charged. The Board shall conduct a hearing upon the complaint and, if it determines that a violation has occurred, it may issue and serve upon the offender an order requiring that he cease and desist from such violation."

SEC. 9. Section 23 is amended to read as follows:

"SEC. 23. (a) The Board is authorized and directed to adopt or prescribe such rules and regulations as it deems necessary to carry out the powers, duties, and functions vested in it by this Act.

"(b) The Board may make and enter such orders as it deems necessary or proper in carrying out the purposes of this Act, including orders to cease and desist from any violation of this Act or any rule or regulation issued thereunder, and may, pending completion of a proceeding before it, enter an order to cease and desist from any activity which *prima facie* appears to the Board to be in violation of this Act or any rule or regulation issued thereunder. The Board may reverse, suspend, or modify, upon such notice and in such manner as it deems proper, any order made by it. Upon application of any party to a decision or order it may grant a rehearing of the same or any matter determined therein, but no such application for or allowance of a rehearing shall, except by special order of the Board, operate as a stay of such order.

"(c) The Board may also delegate to a single Board member or employee the authority to permit rates to go into effect upon less than

the period of thirty days required by Section 18(b) of this Act and Section 2 of the Intercoastal Shipping Act, 1933.

SEC. 10. Section 24 is amended to read as follows:

"SEC. 24. The Board shall enter of record a written report of every hearing held respecting an alleged violation of this Act or rule or regulation thereunder, stating its conclusions, decision, and order, and, if reparation is awarded, the findings of fact on which the award is made, and shall furnish a copy of such report to all parties of the hearing.

"The board may publish such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be competent evidence of such reports in all courts of the United States and of the States, Territories, Districts, and possessions thereof."

SEC. 11. Section 25 is amended to read as follows:

"SEC. 25. It shall be the duty of every common carrier by water in foreign commerce and of every conference of such carriers to designate in writing an agent resident in the United States upon whom service of all notices and process and all orders, decisions, and requirements of the board may be made for and on behalf of said carrier and to file such designation in the office of the secretary of the Board, which designation may from time to time be changed by like writing similarly filed. Service of all notices and process and orders, decisions, and requirements of the Board may be made upon such carrier or conference by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon such carrier or conference and, in default of such designation of such agent, service of any notice or other process in any proceedings before the Board or of any order decision, or requirement of the Board may be made by posting such notice, process, order, requirement, or decision in the office of the secretary of the Board."

SEC. 12. Section 27 is amended to read as follows:

"SEC. 27. For the purpose of conducting hearings when alleged violations of this Act or rule or regulation issued thereunder, or for the purpose of conducting investigative proceedings prior to the issuance of a complaint, the Board may by subpoena served at any place within the United States or its Districts, Territories, or possessions compel the attendance of witnesses and the production of any report, record, book, paper or other document or tangible thing, at any designated place of hearing or investigative proceeding. Subpoenas may be signed by any Board member or hearing examiner. Oaths or affirmations may be administered, witnesses examined, and evidence received by any Board member or hearing examiner, or, under the direction of the Board, by any person authorized under the laws of the United States or any State, Territory, District, or possession thereof to administer oaths. The Board may by order or rule designate employees who shall have the authority to administer oaths and hear testimony in investigative proceedings. Persons so acting under the direction of the Board and witnesses shall, unless employees of the Board, be entitled to the same fees and mileage as in the courts of the United States. The Board and hearing examiners may upon motion quash or modify any subpoena found to be unreasonable or oppressive.

"Failure by any person without adequate excuse to obey a subpoena

served upon him may be deemed a contempt of the Board and the Board or the party on whose request the subpoena was issued may petition the United States district court in the district in which such person resides, or is found, or the United States District Court for the District of Columbia if he resides in a foreign country, to hold such person in contempt and to punish such person as if he were in contempt of that court."

SEC. 13. Section 28 is amended to read as follows:

"SEC. 28. That no person shall be excused on the ground that it may tend to incriminate him or subject him to a penalty of forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to any subpoena authorized by this Act or the subpoena of any court in any proceeding based upon or growing out of any alleged violation of this Act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, and after having first claimed his privilege against self-incrimination, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying."

SEC. 14. Section 29 is amended to read as follows:

"SEC. 29. That in case of violation of any order, rule, regulation, or requirement of the Board issued under any provision of this Act, other than an order for the payment of reparations, the Board, or any party injured by such violation, or the Attorney General, may apply to a district court having jurisdiction of the parties for the enforcement of such order, rule, regulation, or requirement. In such suit for enforcement the district court shall inquire only into whether the order, rule, regulation, or requirement was regularly made and duly issued and if, after hearing, the court determines that the order, rule, regulation, or requirement was regularly made and duly issued it shall enforce obedience thereto by a writ of injunction or other proper process mandatory or otherwise."

SEC. 15. Section 32 is amended to read as follows:

"SEC. 32. Any person who violates any provision of this Act, or any rule, regulation, requirement, or order, other than orders for the payment of reparations but including orders to cease and desist thereunder for which a penalty is not otherwise herein provided, shall be guilty of a misdemeanor punishable by a fine not to exceed \$5,000."

DEPARTMENT OF STATE,
Washington, March 20, 1961.

HON. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter of February 16, 1961, which invited the Department to submit its views and recommendations concerning H.R. 4299 a bill to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences. Interim acknowledgment was made to your letter on February 20, 1961. The Department understands that the proposed legislation is concerned primarily with the authorization of a tying device between maritime shippers and conference carriers, that is dual rates,

with safeguards to prevent this system being used contrary to the public interest. Among other matters, the proposed legislation also deals with requirements for submission of documents to the Federal Maritime Board.

The Department in its letter of January 23, 1961, stated its belief that a tying device such as the dual rate system could, with appropriate safeguards, accomplish the objectives of maintaining stable operating conditions in the shipping trades, and that this objective is important both from the standpoint of our foreign relations in the shipping field and that of maintaining a steady flow of our foreign commerce. It was recognized that a dual rate system has the potentiality, under some circumstances, of being used as a device to exact unduly high freight rates and to eliminate from a trade independent carriers who are not taking steps to upset the stability of the trade. Notice was taken of the fact that governments of practically all nations that supply shipping services to the world consider shipping conferences and their practices as purely commercial activities in which their governments should not—and in practice do not—unilaterally intervene. On the other hand, nations which largely depend upon the shipping services of other countries are only too ready to believe that regulation can be unilaterally imposed. The Department stated that it would appear most important to our foreign policy that the U.S. Government consider carefully any future action in the general field of governmental regulation of shipping engaged in the foreign commerce of the United States, and that no further departures from the international pattern should be made unless a clear and conclusive necessity therefor is demonstrated. Furthermore, the Department suggested that the Congress might also consider legislation to clarify various uncertainties of the present law which may be pointed out to it.

The Department will confine its discussion of H.R. 4299 in relation to its previous positions as set forth above. In principle the Department is in general agreement with the intent of the proposed amendment (sec. 1 of the bill) to section 14 first of the Shipping Act insofar as it implements the view, as expressed in the Department's letter of January 23, 1961, that a tying device such as the dual rate system should include safeguards against its potentialities of operating contrary to the public interest. However, the Department wishes to point out that certain of these safeguards which essentially may be regarded as criteria as to the legality of dual rates may pose difficulties.

In addition, the Department believes that the relationship of section 1 to the existing section 14 third, as it may relate to dual rates, should be clarified. While section 1 would expressly permit the operation of a dual rate system under these safeguards, it is not entirely clear what the relation would then be between section 14 third and section 1. Despite the criteria established by this proposed amendment to 14 first it is possible that a tying device such as the dual rate system, found by the Federal Maritime Board to have met these criteria, might still be challenged as illegal under the specific clause of 14 third which prevents conferences from resorting "to other discriminating or unfair methods * * *." In the Department's view, in order to remove any possible ambiguity in this respect, it might be desirable to amend section 14 third so as to specifically provide that its provisions shall

not be construed to apply to any contract approved by the Federal Maritime Board as meeting the criteria of section 1.

As the committee is aware, the grand jury investigating the practices of shipping conferences and the Federal Maritime Board have issued respectively subpoenas duces tecum and section 21 orders requiring foreign shipping companies to produce certain contracts and agreements located here and abroad involving the waterborne commerce of the United States. The governments of many of the affected foreign shipping companies have protested to the Department that the subpoenas duces tecum and section 21 orders, insofar as they relate to the submission of documents located outside of the United States, represent an unwarranted extension of U.S. territorial jurisdiction contrary to international law. As previously mentioned in the Department's letters to you of January 23, and March 13, 1961, the United Kingdom, Italy, and Japan have instructed their nations not to submit certain of such documents to the Federal Maritime Board, and the Department has been informed that other countries make take similar action. Two U.S. courts have upheld the legality of requesting documents located abroad and another is presently considering the issue; there are some indications that the matter may eventually find its way to the Supreme Court. An amendment to section 15 contained in H.R. 4299 (sec. 2) stipulates that no conference agreement shall be approved by the Federal Maritime Board unless it contains provisions that every signatory shall provide records or other information relating to possible restrictive agreements, wherever located, required by any "proper" order of the Board issued under section 21. The Department recognizes that the objective of this section is to obtain information regarding restrictive conference agreements which may "operate to the detriment of any segments of the commerce of the United States" and which would be useful to the Federal Maritime Board in the administration of section 1. However, as previously noted the British, Italian, and Japanese Governments have advised their shipping companies not to submit to the Federal Maritime Board certain documents located abroad. Their governments, which are unlikely to retreat from this position, may reasonably be expected to take a serious view of such a situation and the consequences as regards the shipping of these countries in the trade to and from the United States cannot be foreseen. For example, one possibility could be the withdrawal of ships of these countries from conferences engaged in U.S. commerce.

Heretofore under section 15 of the act there has been no specific statutory provision authorizing the U.S. Government to pass upon the reasonableness of rates established by conferences in foreign trade, although the Board has found opportunities to influence such rates in its power to disapprove conference agreements. The proposed new section 15 for the first time would give the Board very broad powers to disapprove or veto any conference rate which "it finds to be so unreasonably high or low as to be detrimental" to the commerce of the United States. To the Department's knowledge no other nation has instituted in peacetime such potentially far-reaching ratemaking controls affecting private shipping interests. Should such legislation be enacted in the United States, an important precedent would be established which could be of critical importance in relation to the

present structure of international shipping. Nations which largely depend on the shipping services of other nations would be able to cite the U.S. example as justification for enacting measures to regulate ocean freight rates as they affect their countries. It is understood that other countries are currently considering legislation along these lines. The Department reiterates its previous position that no further departures from the international pattern of the shipping industry, such as this represents, should be made without giving full consideration to the foreign policy implications.

Formal communications from a number of foreign governments concerning H.R. 4299 have been received by the Department with the request that they be brought to the attention of the committee. Copies of these communications will be transmitted by a separate letter. Should information indicating reactions of private foreign interests appear in the hearings, and on which the committee would desire the Department's views, the Department would be pleased to offer additional comments.

In conclusion, the Department supports in principle a dual rate system with appropriate safeguards to insure that this system does not operate contrary to the overall public interest. It is in sympathy with H.R. 4299 insofar as it would accomplish this objective, which objective is consistent with the Department's foreign economic policy not only in the shipping field but also with respect to the encouragement of international trade among the free nations without undue restraints. However, the Department is constrained by important U.S. foreign relations considerations to oppose certain aspects of the proposed legislation in its present form as mentioned above.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

BROOKS HAYS,
Assistant Secretary
(For the Secretary of State).

DEPARTMENT OF STATE,
Washington, May 1, 1961.

HON. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives

DEAR MR. CHAIRMAN: At this juncture in the committee's consideration of H.R. 4299, a bill to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, the Department of State wishes to amplify its comments contained in my letter to you of March 20, 1961, concerning the proposed law. The Department has followed with great interest the committee's progress on this important piece of legislation and believes that the committee has considered many of the manifold problems inherent in establishing additional regulation in the maritime field. It has been noted with special satisfaction that language empowering the Federal Maritime Board to fix minimum-maximum freight rates has been eliminated, a provision which would have seriously affected the foreign relations

of the United States as well as the present structure of the international maritime industry.

The Department has previously brought to the attention of the committee, by its letters of January 23, 1961, and March 20, 1961, the undesirable foreign policy implications arising from the application of section 21 of the Shipping Act, 1916, with regard to the Federal Maritime Board's orders of April 11, 1960. New wording found in section 21 of H.R. 4299 which states that every common carrier by water engaged in the foreign commerce of the United States shall provide records or other information, wherever located, required by any order of the Board, would, it is feared aggravate further our relations with foreign countries in this regard.

Furthermore, a provision intending to force foreign lines to pledge in advance to produce documents located abroad which is present in draft revision No. 2 of H.R. 4299 (sec. 15, p. 7, lines 6-12) would, in the Department's opinion, have an even greater detrimental potential for the United States than the section 21 powers referred to above. This new portion of section 15 stipulates that no agreement shall be approved by the Federal Maritime Board unless it contains provisions that every signatory shall provide records or other information, wherever located, required by an order of the Board. The term "agreement" includes understandings, conferences, and other arrangements. It is the understanding of the Department that this requirement would be effective immediately after enactment into law, and that foreign lines would immediately be faced with the decision as to whether they could pledge in advance to produce documents outside the United States if requested by the Board. In the light of specific instructions already issued by the Governments of the United Kingdom, Italy, and Japan to their shipowners not to submit such documents, similar actions pending in other countries, and vigorous protests made by other governments to the Department on this matter, the Department foresees the possibility that at least some foreign lines would be unable or would decline to make such a pledge. Such refusals could induce withdrawal of certain carriers from the conferences, ultimately threatening the stabilizing influence of the conference rate system. The committee is aware that such a development could be damaging to the American merchant marine and our foreign commerce.

As seen at this time, the solution of the problem of document production can be resolved by (1) acknowledgement by foreign governments that the United States has the right to demand such documents regardless of where they are located; (2) a decision that documents in the possession of foreign companies and outside the United States need not be made available; or (3) pursuance of an acceptable understanding with foreign governments through diplomatic channels. Inasmuch as foreign governments under the existing circumstances are unlikely to retreat from their positions, the Department earnestly requests that the committee give serious consideration to the deletion of the cited provisions from sections 15 and 21 of H.R. 4299 before reporting the bill out of committee. If the committee cannot accept this proposal because of its conviction that documents, wherever located, must be made available, the Department proposes that this revision of sections 15 and 21 be deferred while the matter is thoroughly

explored to determine how this Government can secure the cooperation of foreign governments in a program which will provide the Federal Maritime Board with the information essential to the performance of its responsibilities.

Sincerely yours,

BROOKS HAYS,
Assistant Secretary.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., March 17, 1961.

HON. HERBERT C. BONNER,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN BONNER: This has reference to your letter of February 16, 1961, requesting our comments on H.R. 4299, a bill to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

This bill, among other things, would authorize a carrier or conference of carriers in foreign commerce, under specified conditions, and subject to approval of the Federal Maritime Board, to enter into contracts with shippers at rates lower than published tariff rates and providing for exclusive patronage by the contracting shippers.

The Department believes passage of this bill would promote stability in the steamship industry while protecting the interests of shippers.

For many years, this Department opposed the use of the contract/noncontract or dual system of rates because of the extent to which discrimination, prejudice and reprisals could be practiced against shippers under such system. At the same time, however, we have recognized that practical limitations on the ability of a regulatory agency to effectively regulate operations of foreign-flag vessels, and the fact that most trades are overtonnaged much of the time, made some form of self-regulation by conferences of carriers necessary.

Much of the testimony submitted to your committee by interested persons during the series of hearings in 1959 was heard by representatives of this Department. In addition, we have given the matter considerable study and submitted to your committee on April 1, 1960, certain suggestions designed to promote stability in the steamship industry and to protect the interests of shippers.

We note that a number of the suggestions (or modifications of them) contained in our submission of April 1, 1960, have been incorporated in H.R. 4299 and that additional safeguards have been added to minimize the possibility of destructive competition, and further to assure a higher degree of rate stability. We believe that, with these safeguards, and with the more intensive supervisory role provided for the Federal Maritime Board, the Department need no longer object to the use of exclusive patronage contracts.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN,
Secretary.

DEPARTMENT OF AGRICULTURE,
Washington D.C., April 3, 1961.

HON. HERBERT C. BONNER,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN BONNER: Under date of March 17, 1961, we forwarded to you our favorable report on H.R. 4299, a bill to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

In reporting on this bill, we had concluded, in connection with the rate-filing provisions in section 3, that the provision permitting rates to go into effect on less than 30 days' notice, if approved by the Federal Maritime Board, would meet the shipping requirements of the Department of Agriculture. We note, however, that in his testimony before your committee on March 20, Chairman Thomas Stakem, of the Federal Maritime Board, suggested an amendment which would exclude from the provisions of section 3 of the bill cargo loaded in bulk without mark or count. Upon review, we believe this amendment to be quite desirable and wish to support the proposal made by Mr. Stakem on behalf of the Federal Maritime Board.

The Bureau of the Budget advises that there is no objection to the persentation of this addition to our report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN,
Secretary.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 21, 1961.

HON. HERBERT C. BONNER,
*Chairman, Committee on Merchant Marine and Fisheries, House of
Representatives.*

DEAR MR. CHAIRMAN: Further reference is made to your letter of February 16, 1961, acknowledged on February 17, requesting the comments of the General Accounting Office concerning H.R. 4299, 87th Congress, 1st session, entitled "A bill to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences."

The subject bill is a matter of policy for determination by the Congress and, therefore, we make no recommendation with respect to its enactment. However, in the event the measure is given favorable consideration by your committee, would like to suggest the following:

(1) In order to better protect the interests of the United States as a shipper, it appears that to permit the transportation of property for or on behalf of the Government at reduced rates, there should be added to the proposed bill a clause similar to that contained in section 6 of the Intercoastal Shipping Act, 1933, which reads as follows:

"That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal Governments, or for charitable purposes."

(2) At present, our Office is experiencing difficulty in collecting overcharge claims stated against certain ocean carriers in foreign commerce based on the rate applicable to the commodity actually shipped. In such instances the carrier usually assesses the higher "Cargo, n.o.s." rate, since the commodity is not fully described or is misdescribed on the bill of lading or the ocean manifest. When the ocean carrier's bill is received here for audit and examination and any doubt exists as to the bill of lading or ocean manifest description of a particular commodity, the administrative agency is requested to furnish the proper description of the article shipped. In some instances it is found that a rate lower than the "Cargo, n.o.s." rate is applicable to the commodity actually shipped and the carrier is requested to refund any difference by our notice of overpayment, form 1003.

The carrier resists our attempt to collect such overcharges, and relies upon a certain clause of its commercial bill of lading which provides as follows:

"Freight may be calculated on the basis of the particulars of the goods furnished by the shipper herein but the carrier may at any time open the package and examine, weigh, measure and value the goods. In case shipper's particulars are found to be erroneous and additional freight is payable, the goods shall be liable for any expense incurred for examining, weighing, measuring and valuing the goods."

This appears to be an unreasonable rule, since it provides for unilateral action whereby the carrier may collect on the proper description of the commodity shipped, if producing higher charges, but the shipper, under the steamship company's interpretation, is precluded from action where the opposite situation exists.

In this connection, we note that section 18(b) (3) of the proposed bill is somewhat similar to paragraph 7, section 6, of part 1 of the Interstate Commerce Act, and in cases which relate to this section, it has been held that the presumption of the correctness of the bill of lading description is not conclusive (*Bell Company v. Ann Arbor Railroad Company*, 174 I.C.C. 300, 301), and that the important fact is what actually moved, not what was billed (*Penn Facing Mills Company v. Ann Arbor Railroad*, 182 I.C.C. 614, 615; *Freight Transportation Engineers, Inc. v. Southern Ties Trucking Co.*, 48 M.C.C. 372, 373; *Fedders-Quigan Corporation, et al. v. Long Trans. Co.*, M.C.C. 581, 586; *New York Central R. Co. v. Goldberg*, 250 U.S. 85).

Although it appears that the provisions of section 18(b) (3) of the proposed bill would not prohibit a change in the bill of lading description of the commodity shipped, in the light of the provisions of the carrier's commercial bill of lading, it is believed that the following positive statement should be added to section 18(b) to clarify the situation:

"When the commodity shipped is found to be incorrectly described. freight charges must be collected according to the proper description."

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., March 17, 1961.

HON. HERBERT C. BONNER,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.*

MY DEAR MR. CHAIRMAN: Your request for comment on H.R. 4299, a bill to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

The proposed bill would amend the Shipping Act of 1916 with regard to the use of dual rates in steamship conferences. The proposed legislation would have no effect on Department of Defense shipments and appears to be a matter of primary importance to the Department of Commerce.

In view of the foregoing, the Department of the Navy, on behalf of the Department of Defense, neither supports nor opposes enactment of H.R. 4299, but defers to the executive agency primarily concerned with this matter.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

C. E. RICE, Jr.,
Captain, U.S. Navy, Acting Deputy Chief
(For the Secretary of the Navy).

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*):

SECTION 14, SHIPPING ACT, 1916

SEC. 14. That no common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port or a port of a foreign country—

First. (a) Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term "deferred rebate" in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion

of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

(b) *Charge or enter into any combination, agreement, or understanding, express or implied, to charge any person, solely or in part because he does not agree to or give all or any part of his patronage, higher freight rates or charges than are accorded to any person who does agree to or give such patronage: Provided, however, That notwithstanding any other provision of this Act, on application the Board shall, after notice, permit the use by any carrier or conference of carriers in foreign commerce of any contract, amendment or modification thereof, which is available to all shippers and consignees on equal terms, and conditions, which provides lower rates to a shipper or consignee who agrees to give all or any part of his patronage to such carrier or conference of carriers and which the Board finds will be neither detrimental to the commerce of the United States nor contrary to the public interest, and which expressly (1) assures to the contract shipper as much of the available space on the vessels of the carrier or conference of carriers as is necessary, on reasonable notice, to meet the normal demands of the contract shipper; (2) provides that, whenever a tariff rate for the carriage of goods becomes effective, insofar as it is under the control of the carrier or conference of carriers, it shall not be increased for a reasonable period, but in no case less than ninety days; (3) covers only those goods of the contract shipper as to the shipment of which he has the legal right at the time of shipment to select the carrier; (4) does not require the contract shipper to divert shipment of goods from natural routings not served by the carrier or conference of carriers where direct carriage is available; (5) limits damages recoverable for breach by either party to actual damages to be determined after breach in accordance with the principles of commercial contract law: Provided, however, That the contract may specify that in the case of a breach by a contract shipper or consignee the damages may be an amount not exceeding the contract rate on the particular shipment, less the cost of handling; (6) permits the contract shipper to terminate at any time without penalty upon ninety days' notice; (7) provides for a spread between ordinary rates and rates charged for contract shippers that the Board finds to be reasonable in all the circumstances but which spread shall in no event be more than 15 per centum of the ordinary rates; and (8) contains such other provisions not inconsistent herewith as the Board shall require or permit. The Federal Maritime Board shall withdraw permission which it has granted under the authority contained in this section for the use of any contract if it finds, after notice and hearings, that the use of such contract is detrimental to the commerce of the United States or contrary to the public interest. The carrier or conference of carriers may on ninety days notice terminate without penalty the contract rate system herein authorized, in whole, or with respect to any commodity or service: Provided, however, That after such termination the carrier or conference of carriers may not reinstitute such contract rate system or part thereof so terminated without prior Board approval in accordance with the provisions of this section. As used in this section, the term "contract shipper" means a*

person other than a carrier or conference of carriers who is a party to a contract the use of which may be permitted under this section.

Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$25,000 for each offense: *Provided*, That nothing in this section or elsewhere in this Act, shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by the members of a conference on May 19, 1958, which conference is organized under an agreement approved under section 15 of this Act by the regulatory body administering this Act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this Act. The term "dual rate contract arrangement" as used herein means a practice whereby a conference establishes tariffs of rates at two levels the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree.

SECTION 15, SHIPPING ACT, 1916

[SEC. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the board a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

【The board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations.

【Agreements existing at the time of the organization of the board shall be lawful until disapproved by the board. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the board.

【All agreements, modifications, or cancellations made after the organization of the board shall be lawful only when and as long as approved by the board, and before approval or after approval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

【Every agreement, modification, or cancellation lawful under this section shall be excepted from the provision of the Act approved, July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and amendments and acts supplementary thereto, and the provisions of sections seventy-three to seventy-seven, both inclusive, of the Act, approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", and amendments and acts not supplementary thereto.

【Whoever violates any provision of this section shall be liable to a penalty of \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.】

Sec. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the Board a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements.

The Board shall by order, after notice and hearing, disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this

Act, and shall approve all other agreements, modifications, or cancellations that it finds not contrary to the public interest. No such agreement shall be approved, nor shall continued approval be permitted for any agreement, (1) between carriers or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) which permits shippers who act as carrier agents to represent such carrier in conference activities unless the Board finds that no other qualified person is available, or (3) in respect to conference agreements, fails to provide reasonable and equal terms and conditions for the admission and readmission of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership without penalty upon reasonable notice.

No such agreement shall be approved unless it shall (1) designate a person upon whom service of process may be made within the United States which will be effective against every signatory to such agreement, and (2) contains provisions that every signatory shall provide records or other information, wherever located, required by any order of the Board which contains the minimum notice provisions required by the Administrative Procedures Act (5 U.S.C. 1001 and the following). No conference agreement shall be approved unless the Board finds that it contains effective provisions for policing the obligations under it. The Board shall disapprove any such agreement, after reasonable notice, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for the consideration of shippers' requests and complaints.

Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Board shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Board; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by the proviso to section 14 First (b) which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, be permitted to take effect without prior approval upon compliance with the publication and filing requirements of section 18(b) hereof and with the provisions of any regulations the Board may adopt. The Board shall disapprove any conference rate, fare, or charge which after hearing it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

Every agreement, modification, or cancellation lawful under this section, or permitted under section 14 First, shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', and amendments and Acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27,

1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

SECTION 18, SHIPPING ACT, 1916

SEC. 18. (a) That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

Every such carrier shall file with the board and keep open to public inspection, in the form and manner and within the time prescribed by the board, the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges filed in compliance with this section, except with the approval of the board and after ten days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made; but the board for good cause shown may waive such notice.

Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carriers is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice.

(b) (1) *From and after ninety days following enactment hereof every common carrier by water in foreign commerce and every conference of such carriers shall file with the Board and keep open to public inspection tariffs showing all the rates, fares, and charges of such carrier or conference of carriers for transportation between all points on its own route and on any through route which has been established. Such tariffs shall plainly show the places between which freight will be carried, and shall contain the classification of freight in force, and shall also state separately such terminal or other charge, privilege, or facility under the control of the carrier or conference of carriers which is granted or allowed, and any rules or regulations which in any wise change, effect, or determine any part or the aggregate of such aforesaid rates, or charges, and shall include specimens of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement. Copies of such tariffs shall*

be made available to any person and a reasonable charge may be made therefor. The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count.

(2) No change shall be made in the rates, fares, charges, classifications, rules or regulations, which results in an increase in cost to the shipper, nor shall any new or initial rate of any common carrier by water in foreign commerce or conference of such carriers be instituted, except by the publication, and filing, as aforesaid, of a new tariff or tariffs which shall become effective not earlier than thirty days after the date of publication and filing thereof with the Board, and such tariff or tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the time when the rates, fares, charges, classifications, rules or regulations as changed are to become effective: Provided, That the Board may, in its discretion and for good cause, allow such changes upon less than the period of thirty days herein specified. Any change in the rates, fares, charges, or classifications, rules or regulations which results in a decreased cost to the shipper may become effective upon the publication and filing with the Board. The term "tariff" as used in this paragraph shall include any amendment, supplement or reissue.

(3) No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates, and charges which are specified in its tariffs on file with the Board and duly published and in effect at the time; nor shall any such carrier rebate, refund or remit in any manner or by any device any portion of the rates, or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs.

(4) The Board shall by regulations prescribe the form and manner in which the tariffs required by this section shall be published and filed; and the Board is authorized to reject any tariff filed with it which is not in conformity with this section and with such regulations. Any tariff so rejected by the Board shall be void and its use shall be unlawful.

(5) Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

SECTION 19, SHIPPING ACT, 1916

SEC. 19. (a) That whenever a common carrier by water in interstate commerce reduces its rates on the carriage of any species of freight to or from competitive points below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water, it shall not increase such rates unless after hearing the board finds that such proposed increase rests upon changed conditions other than the elimination of said competition.

(b) *It shall be unlawful for any common carrier by water or any conference of carriers, directly or indirectly, to reduce unreasonably its rates or charges for the purpose of destroying competition or eliminating a competitor: Provided, however, That nothing contained in the Act shall be construed to prohibit a common carrier by water or a*

conference of carriers from reducing its rates or charges in good faith to meet competition. Whoever violates any provision of this subsection (b) shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

SECTION 20, SHIPPING ACT, 1916

SEC. 20. That it shall be unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

Nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States, or of any State, Territory, District, or possession thereof, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime, or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers[.]; *or to prevent the giving by any common carrier by water which is a party to a conference agreement approved pursuant to section 15 of this Act to, or the soliciting or receipt by the conference or any person, firm, corporation, or agency designated by the conference, information for the purpose of determining whether a shipper or consignee has committed a breach of an agreement with the conference or its member lines or of determining whether a conference member has committed a breach of the conference agreement, or for the purpose of compiling statistics of cargo movement.*

SECTION 21, SHIPPING ACT, 1916

[SEC. 21. That the board may require any common carrier by water, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this Act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the board so requires, and shall be furnished in the form and within the time prescribed by the board. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this

section shall forfeit to the United States the sum of \$100 for each day of such default.

Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than \$1,000, or imprisonment for not more than one year, or to both such fine and imprisonment.】

Sec. 21 (a) That the Board may require any common carrier by water, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this Act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the Board so requires, and shall be furnished in the form and within the time prescribed by the Board. Every common carrier by water engaged in the foreign commerce of the United States shall (1) designate a person upon whom service of process may be made within the United States in any action, proceeding, or investigation brought by or on behalf of the United States or any agency thereof, and (2) provide records or other information, wherever located, required by any order of the Board which contains the minimum notice provisions required by the Administrative Procedure Act (5 U.S.C. 1001 and the following). Whoever fails to file any report, account, record, rate, charge, memorandum, or other information as required by this section shall forfeit to the United States the sum of \$100 for each day of such default.

(b) Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than \$1,000, or imprisonment for not more than one year, or to both such fine and imprisonment.

(c) The Board shall make such rules and regulations as may be necessary to carry out sections 14 First (b), 15, 18(b), 19(b) 20, and 21 of this Act.

ADDITIONAL VIEWS OF MR. TOLLEFSON AND MR. RAY

Because it is necessary to correct the effects of an unfortunate Supreme Court decision, I shall vote for H.R. 6775, the pending measure which seeks to legalize dual rate shipping agreements that have been used for over 40 years. However, I shall do so with some reluctance because of other provisions in the bill. I am fearful that in the final analysis they may be harmful to the American merchant marine.

Amongst other things, the bill seeks to give the United States the authority to regulate international shipping—something that no other nation in the world has tried to do to my knowledge. This is a point which some of the supporters of the measure have failed to fully appreciate. The bill would not be limited in its application to our own ships, but would apply to foreign vessels as well, which are more numerous even in the trades in and out of U.S. ports.

The foreign commerce of our own Nation is likewise the foreign commerce of many other nations, each having as much right to regulate it as is assumed by the United States in this proposal. It does not require a great deal of imagination to foresee the confusion and turmoil which would arise if other nations also sought to enact their own regulatory proposals.

The bill would reverse the position taken by our own Government in this regard. In 1935, Mr. Cordell Hull while Secretary of State said (amongst other things) :

I can understand that the regulation of the rates charged by vessels in our domestic commerce may be necessary, but I think it important to keep clearly in mind the essential distinction between that commerce which both begins and ends within our territory, and the foreign commerce which at one end or the other enters the jurisdiction of another government.

I do not feel that an attempt by this Government to prescribe minimum rates which may be charged by foreign vessels on the cargoes which they carry between American and foreign ports would be in harmony with that basic principle in our treaty structure under which we have granted to foreign shipping the right of free access to our ports and in return have obtained for our ships the right of free access to foreign ports. Certainly such regulation would be in conflict with the generally accepted practices of international law.

In January of 1961 the State Department views were outlined as follows:

In response to your question concerning the extent to which common carriers in trade with the United States should be regulated by the United States, the Department of State

foresees that difficulties will continue to arise in our relationship with other maritime nations in proportion to the extent that the United States asserts a regulatory authority which interferes substantially with the long-established and generally accepted pattern of shipping practice in foreign trade.

Governments of practically all nations that supply shipping services to the world consider shipping conferences and their practices as purely commercial activities in which their governments should not—and in practice do not—unilaterally intervene. On the other hand, nations which largely depend upon the shipping services of other countries are only too ready to believe that regulation can be unilaterally imposed upon those shipping services. Because of this attitude it would appear most important to our foreign policy that the U.S. Government consider carefully any future action in the general field of governmental regulation of shipping engaged in the foreign commerce of the United States.

Finally, the Department of State is of the opinion that, from the standpoint of international relations, no further departures from the international pattern should be made unless a clear and conclusive necessity therefore is demonstrated, taking into full consideration the foreign policy implications.

In letters to our Department of State, several foreign governments have voiced their opposition to the proposed legislation. They especially object to the provisions of the measure which would require their ship operators to submit to our Federal Maritime Board documents and papers located abroad over which we have no legal jurisdiction whatsoever. Some have already directed their nationals not to supply such documents.

Our efforts to regulate international shipping, and to obtain documents outside our jurisdiction, could be considered an affront to the sovereignty of foreign nations, and could well result in foreign operators withdrawing from shipping conferences of which American operators are members. If this should happen (and it has been indicated that there will be such withdrawals) the current conference system will probably fail. If it fails, the American operator will feel the adverse effects more than will his foreign counterpart. Despite the Government operating differential subsidy he receives, the American operator will be placed at a competitive disadvantage simply because such subsidy does not equal the full difference between his operating expenses and those of the foreigner. The foreign operators could easily cut rates below those previously fixed by the conference and could, if they wished, drive the American out of business.

The bill contains a provision to the general effect that the Federal Maritime Board may not approve a dual rate contract unless the Board finds that it is not intended, and will not be reasonably likely to cause the exclusion of other carriers from a given trade. Counsel for the Board testified that such language would make it extremely difficult for the Board to approve any contract. The reasons for his opinion are to be found in the hearings. The dual rate contract is a tying arrangement under which a shipper agrees to ship all his cargo

on conference lines for a stated period of time. The natural effect of such contracts is to make it difficult if not impossible for nonconference operators to obtain sufficient cargo to operate in a given trade. Therefore, it would be difficult for the Board to find that a dual rate contract "would not be likely" to cause the exclusion of another carrier.

Another point of view is possible. Assistant Attorney General Loevinger testified that he was concerned that this language—

might be construed to mean that this forced option does not amount to "exclusion" from the trade and that a carrier would not be "excluded" from the trade within the meaning of the bill so long as he could survive by joining a conference regardless of whether he wishes to join or not.

They can also remain in the trade by reducing their rates below the minimum rates of the conference. The hearings showed that non-conference carriers have done so.

Because of this difference of view, it seems to me the pertinent language of the bill should be modified. I attempted to obtain language modification suggestions after the close of the hearings but was unable to do so. Perhaps this can be done before the Senate takes final action on the measure.

Section 3 of the bill provides that all agreements which are lawful immediately prior to enactment of this act shall remain lawful for 1 year after enactment unless disapproved, canceled or modified by the Federal Maritime Board within that year. I fear that this provision imposes on the Board a completely impossible task since it contemplates that within 1 year from enactment the Board will be able to review and take action on the thousands and thousands of agreements which have been filed and approved under the 1916 act. While this task would appear impossible under the best of circumstances, it is even worse if, as reported, the Board is about to undergo reorganization. I see no reason why agreements that have been approved should not remain lawful until disapproved, canceled or modified by the Board.

One of the difficult problems confronting our committee came to be known as the f.o.b.-f.a.s. problem. It seemed impossible of solution but I trust that after the proposed reorganization of the Maritime Board, the new members and staff will be able to offer some answer.

Other provisions of the bill will be discussed on the floor, and I need not go into them in the report. As stated at the outset, I shall vote for the bill because of the need for legalizing the dual rate system. It is to be hoped that when it reaches the other body, consideration will be given to the advisability of modifying the language thereof to eliminate what I consider to be objectionable features.

THOR C. TOLLEFSON.

JOHN H. RAY.

SUPPLEMENTAL VIEWS OF MR. MAILLIARD

I concur in general with the additional views expressed by Mr. Tollefson and Mr. Ray. In addition, however, I would like to express the hope that the executive branch will review this entire matter and arrive at a uniform policy position upon it. For instance, the testimony heard and reports received from the Department of Commerce, the Department of State, the Department of Justice, and the Department of Agriculture were at variance with each other in a number of important particulars.

WILLIAM S. MAILLIARD.

87TH CONGRESS
1ST SESSION

H. R. 6775

[Report No. 498]

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 1961

Mr. BONNER introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

JUNE 8, 1961

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

A BILL

To amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That section 14, Shipping Act, 1916, is hereby amended as follows:

(a) Insert "(a)" immediately after "First".

(b) Add the following subsection (b) at the end of paragraph "First":

"(b) Charge or enter into any combination, agreement, or understanding, express or implied, to charge any person, solely or in part because he does not agree to or give all or any part of his patronage, higher freight rates or charges

1 than are accorded to any person who does agree to or give
2 such patronage: *Provided, however, That notwithstanding*
3 any other provision of this Act, on application the Board
4 shall, after notice, permit the use by any carrier or confer-
5 ence of carriers in foreign commerce of any contract, amend-
6 ment or modification thereof, which is available to all
7 shippers and consignees on equal terms, and conditions, which
8 provides lower rates to a shipper or consignee who agrees to
9 give all or any part of his patronage to such carrier or con-
10 ference of carriers and which the Board finds *is not intended,*
11 *and will not be reasonably likely, to cause the exclusion of any*
12 *other carrier from the trade, and which the Board finds will*
13 be neither detrimental to the commerce of the United States
14 nor contrary to the public interest, and which expressly (1)
15 assures to the contract shipper as much of the available space
16 on the vessels of the carrier or conference of carriers as is
17 necessary, on reasonable notice, to meet the normal demands
18 of the contract shipper; (2) provides that, whenever a tariff
19 rate for the carriage of goods becomes effective, insofar as
20 it is under the control of the carrier or conference of carriers,
21 it shall not be increased for a reasonable period, but in no
22 case less than ninety days; (3) covers only those goods of
23 the contract shipper as to the shipment of which he has the
24 legal right at the time of shipment to select the carrier; (4)
25 does not require the contract shipper to divert shipment of

1 goods from natural routings not served by the carrier or con-
2 ference of carriers where direct carriage is available; (5)
3 limits damages recoverable for breach by either party to
4 actual damages to be determined after breach in accordance
5 with the principles of commercial contract law: *Provided*,
6 *however*, That the contract may specify that in the case of
7 a breach by a contract shipper or consignee the damages
8 may be an amount not exceeding the contract rate on the
9 particular shipment, less the cost of handling; (6) permits
10 the contract shipper to terminate at any time without
11 penalty upon ninety days' notice; (7) provides for a spread
12 between ordinary rates and rates charged for contract
13 shippers that the Board finds to be reasonable in all the cir-
14 cumstances but which spread shall in no event be more than
15 15 per centum of the ordinary rates; and (8) contains such
16 other provisions not inconsistent herewith as the Board shall
17 require or permit. The Federal Maritime Board shall with-
18 draw permission which it has granted under the authority
19 contained in this section for the use of any contract if it finds,
20 after notice and hearing, that the use of such contract *tends to*
21 *cause the elimination from, or prevent the entry into, the trade*
22 *of any carrier, or is detrimental to the commerce of the*
23 *United States or contrary to the public interest.* The
24 carrier or conference of carriers may on ninety days
25 notice terminate without penalty the contract rate

1 system herein authorized, in whole, or with respect
2 to any commodity or service: *Provided, however,* That after
3 such termination the carrier or conference of carriers
4 may not reinstitute such contract rate system or part thereof
5 so terminated without prior Board approval in accordance
6 with the provisions of this section. As used in this section,
7 the term 'contract shipper' means a person other than a car-
8 rier or conference of carriers who is a party to a contract the
9 use of which may be permitted under this section."

10 SEC. 2. Section 15, Shipping Act, 1916, is amended to
11 read as follows:

12 "SEC. 15. That every common carrier by water, or
13 other person subject to this Act, shall file immediately
14 with the Board a true copy, or, if oral, a true and com-
15 plete memorandum, of every agreement with another such
16 carrier or other person subject to this Act, or modification
17 or cancellation thereof, to which it may be a party or con-
18 form in whole or in part, fixing or regulating transportation
19 rates or fares; giving or receiving special rates, accommo-
20 dations, or other special privileges or advantages; controlling,
21 regulating, preventing, or destroying competition; pooling
22 or apportioning earnings, losses, or traffic; allotting ports or
23 restricting or otherwise regulating the number and char-
24 acter of sailings between ports; limiting or regulating in any
25 way the volume or character of freight or passenger traffic
26 to be carried; or in any manner providing for an exclusive,

1 preferential, or cooperative working arrangement. The
2 term 'agreement' in this section includes understandings,
3 conferences, and other arrangements.

4 "The Board shall by order, after notice and hearing,
5 disapprove, cancel, or modify any agreement, or any modi-
6 fication or cancellation thereof, whether or not previously
7 approved by it, that it finds to be unjustly discriminatory
8 or unfair as between carriers, shippers, exporters, importers,
9 or ports, or between exporters from the United States and
10 their foreign competitors, or to operate to the detriment of
11 the commerce of the United States, or to be in violation
12 of this Act, and shall approve all other agreements, modifi-
13 cations, or cancellations that it finds not contrary to the
14 public interest. No such agreement shall be approved, nor
15 shall continued approval be permitted for any agreement,
16 (1) between carriers or conferences of carriers serving dif-
17 ferent trades that would otherwise be naturally competitive,
18 unless in the case of agreements between carriers, each car-
19 rier, or in the case of agreements between conferences, each
20 conference, retains the right of independent action, or (2)
21 which permits shippers who act as carrier agents to repre-
22 sent such carrier in conference activities unless the Board
23 finds that no other qualified person is available, or (3)
24 whose probable effect will be reasonably likely to exclude
25 any other carrier from the trade, or (4) in respect to

1 conference agreements, fails to provide reasonable and
2 equal terms and conditions for the admission and re-
3 admission of other qualified carriers in the trade, or fails
4 to provide that any member may withdraw from member-
5 ship without penalty upon reasonable notice.

6 "No such agreement shall be approved unless it shall
7 (1) designate a person upon whom service of process
8 may be made within the United States which will be effec-
9 tive against every signatory to such agreement, and (2)
10 contains provisions that every signatory shall provide rec-
11 ords or other information, wherever located, required by any
12 order of the Board which contains the minimum notice
13 provisions required by the Administrative Procedures Act
14 (5 U.S.C. 1001 and the following). No conference agree-
15 ment shall be approved unless the Board finds that it con-
16 tains effective provisions for policing the obligations under
17 it. The Board shall disapprove any such agreement, after
18 reasonable notice, on a finding of inadequate policing of the
19 obligations under it, or of failure or refusal to adopt and
20 maintain reasonable procedures for the consideration of
21 shippers' requests and complaints.

22 "Any agreement and any modification or cancellation
23 of any agreement not approved, or disapproved, by the
24 Board shall be unlawful, and agreements, modifications, and
25 cancellations shall be lawful only when and as long as

1 approved by the Board; before approval or after disapproval
2 it shall be unlawful to carry out in whole or in part, directly
3 or indirectly, any such agreement, modification, or cancel-
4 lation; except that tariff rates, fares, and charges, and classi-
5 fications, rules, and regulations explanatory thereof (includ-
6 ing changes in special rates and charges covered by the
7 proviso to section 14 First (b) which do not involve a
8 change in the spread between such rates and charges and
9 the rates and charges applicable to noncontract shippers)
10 agreed upon by approved conferences, and changes and
11 amendments thereto, if otherwise in accordance with law,
12 be permitted to take effect without prior approval upon
13 compliance with the publication and filing requirements of
14 section 18 (b) hereof and with the provisions of any regula-
15 tions the Board may adopt. The Board shall disapprove
16 any conference rate, fare, or charge which after hearing it
17 finds to be so unreasonably high or low as to be detrimental
18 to the commerce of the United States.

19 "Every agreement, modification, or cancellation lawful
20 under this section, or permitted under section 14 First, shall
21 be excepted from the provisions of the Act approved July
22 2, 1890, entitled 'An Act to protect trade and commerce
23 against unlawful restraints and monopolies', and amendments
24 and Acts supplementary thereto, and the provisions of
25 sections 73 to 77, both inclusive, of the Act approved

1 August 27, 1894, entitled 'An Act to reduce taxation, to
2 provide revenue for the Government, and for other purposes';
3 and amendments and Acts supplementary thereto.

4 "Whoever violates any provision of this section shall be
5 liable to a penalty of not more than \$1,000 for each day such
6 violation continues, to be recovered by the United States in a
7 civil action."

8 SEC. 3. Notwithstanding the provisions of sections 14
9 First and 15 of the Shipping Act, 1916, as amended by this
10 Act, all agreements which are lawful under the Shipping Act,
11 1916, immediately prior to enactment of this Act, shall re-
12 main lawful for one year after enactment of this Act unless
13 disapproved, canceled, or modified by the Board pursuant to
14 the provisions of the Shipping Act, 1916, as amended by this
15 Act, within that year.

16 SEC. 4. Section 18, Shipping Act, 1916, is hereby
17 amended as follows:

18 (a) Insert "(a)" immediately after the section number
19 "18".

20 (b) Add the following subsection 18 (b) :

21 "(b) (1) From and after ninety days following enact-
22 ment hereof every common carrier by water in foreign com-
23 merce and every conference of such carriers shall file with
24 the Board and keep open to public inspection tariffs showing
25 all the rates, fares, and charges of such carrier or conference

1 of carriers for transportation between all points on its own
2 route and on any through route which has been established.
3 Such tariffs shall plainly show the places between which
4 freight will be carried, and shall contain the classification of
5 freight in force, and shall also state separately such terminal
6 or other charge, privilege, or facility under the control of the
7 carrier or conference of carriers which is granted or allowed,
8 and any rules or regulations which in any wise change, effect,
9 or determine any part or the aggregate of such aforesaid
10 rates, or charges, and shall include specimens of any bill of
11 lading, contract of affreightment, or other document evidenc-
12 ing the transportation agreement. Copies of such tariffs shall
13 be made available to any person and a reasonable charge may
14 be made therefor. The requirements of this section shall not
15 be applicable to cargo loaded and carried in bulk without
16 mark or count.

17 “(2) No change shall be made in the rates, fares,
18 charges, classifications, rules or regulations, which results in
19 an increase in cost to the shipper, nor shall any new or
20 initial rate of any common carrier by water in foreign com-
21 merce or conference of such carriers be instituted, except
22 by the publication, and filing, as aforesaid, of a new tariff or
23 tariffs which shall become effective not earlier than thirty
24 days after the date of publication and filing thereof with the
25 Board, and such tariff or tariffs shall plainly show the changes

1 proposed to be made in the tariff or tariffs then in force and
2 the time when the rates, fares, charges, classifications, rules
3 or regulations as changed are to become effective: *Provided*,
4 That the Board may, in its discretion and for good cause,
5 allow such changes upon less than the period of thirty days
6 herein specified. Any change in the rates, fares, charges,
7 or classifications, rules or regulations which results in a de-
8 creased cost to the shipper may become effective upon the
9 publication and filing with the Board. The term 'tariff' as
10 used in this paragraph shall include any amendment, supple-
11 ment or reissue.

12 “(3) No common carrier by water in foreign commerce
13 or conference of such carriers shall charge or demand or
14 collect or receive a greater or less or different compensation
15 for the transportation of property or for any service in con-
16 nection therewith than the rates, and charges which are
17 specified in its tariffs on file with the Board and duly pub-
18 lished and in effect at the time; nor shall any such carrier
19 rebate, refund or remit in any manner or by any device any
20 portion of the rates, or charges so specified, nor extend or
21 deny to any person any privilege or facility, except in ac-
22 cordance with such tariffs.

23 “(4) The Board shall by regulations prescribe the
24 form and manner in which the tariffs required by this section
25 shall be published and filed; and the Board is authorized:

1 to reject any tariff filed with it which is not in conformity
2 with this section and with such regulations. Any tariff so
3 rejected by the Board shall be void and its use shall be
4 unlawful.

5 “(5) Whoever violates any provision of this section
6 shall be liable to a penalty of not more than \$1,000 for
7 each day such violation continues, to be recovered by the
8 United States in a civil action.”

9 SEC. 5. Section 19, Shipping Act, 1916, is amended
10 by inserting “(a)” immediately after the section number
11 “19”, and adding the following subsection:

12 “(b) It shall be unlawful for any common carrier by
13 water or any conference of carriers, directly or indirectly,
14 to reduce unreasonably its rates or charges for the purpose
15 of destroying competition or eliminating a competitor.
16 *Provided, however,* That nothing contained in the Act shall
17 be construed to prohibit a common carrier by water or a
18 conference of carriers from reducing its rates or charges in
19 good faith to meet competition. Whoever violates any pro-
20 vision of this subsection (b) shall be liable to a penalty of
21 not more than \$1,000 for each day such violation continues,
22 to be recovered by the United States in a civil action.”

23 SEC. 6. Section 20, Shipping Act, 1916, is amended
24 by changing the period at the end thereof to a semicolon
25 and adding the following:

1 “or to prevent the giving by any common carrier by water
2 which is a party to a conference agreement approved pur-
3 suant to section 15 of this Act to, or the soliciting or receipt
4 by the conference or any person, firm, corporation, or agency
5 designated by the conference, information for the purpose
6 of determining whether a shipper or consignee has com-
7 mitted a breach of an agreement with the conference or its
8 member lines or of determining whether a conference mem-
9 ber has committed a breach of the conference agreement,
10 or for the purpose of compiling statistics of cargo move-
11 ment.”

12 SEC. 7. Section 21, Shipping Act, 1916, is amended to
13 read as follows:

14 “SEC. 21. (a) That the Board may require any com-
15 mon carrier by water, or other person subject to this Act, or
16 any officer, receiver, trustee, lessee, agent, or employee
17 thereof, to file with it any periodical or special report,
18 or any account, record, rate, or charge, or any memorandum
19 of any facts and transactions appertaining to the business of
20 such carrier or other person subject to this Act. Such re-
21 port, account, record, rate, charge, or memorandum shall
22 be under oath whenever the Board so requires, and shall be
23 furnished in the form and within the time prescribed by the
24 Board. Every common carrier by water engaged in the
25 foreign commerce of the United States shall (1) designate

1 a person upon whom service of process may be made within
2 the United States in any action, proceeding, or investigation
3 brought by or on behalf of the United States or any agency
4 thereof, and (2) provide records or other information, wher-
5 ever located, required by any order of the Board which
6 contains the minimum notice provisions required by the
7 Administrative Procedure Act (5 U.S.C. 1001 and the
8 following). Whoever fails to file any report, account, rec-
9 ord, rate, charge, memorandum, or other information as
10 required by this section shall forfeit to the United States
11 the sum of \$100 for each day of such default.

12 “(b) Whoever willfully falsifies, destroys, mutilates, or
13 alters any such report, account, record, rate, charge, or
14 memorandum, or willfully files a false report, account, record,
15 rate, charge, or memorandum shall be guilty of a misde-
16 meanor, and subject upon conviction to a fine of not more
17 than \$1,000, or imprisonment for not more than one year,
18 or to both such fine and imprisonment.

19 “(c) The Board shall make such rules and regulations
20 as may be necessary to carry out sections 14 First (b), 15,
21 18 (b), 19 (b), 20, and 21 of this Act.”

87TH CONGRESS
1ST SESSION

H. R. 6775

[Report No. 498]

A BILL

To amend the Shipping Act, 1916, as amended,
to provide for the operation of steamship
conferences.

By Mr. BONNER

MAY 3, 1961

Referred to the Committee on Merchant Marine and
Fisheries

JUNE 8, 1961

Reported with amendments, committed to the Com-
mittee of the Whole House on the State of the
Union, and ordered to be printed

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For Department
Staff Only)

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For actions of June 12, 1961
87th-1st, No. 97

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HIGHLIGHTS: Senate passed housing bill. House debated Commerce-General Government Matters appropriation bill. Rep. Kyl opposed financing Wool Act by direct appropriations. Sen. Humphrey criticized migratory farm labor program.

SENATE

1. HOUSING. By a vote of 64 to 25, passed with amendments S. 1922, the omnibus housing bill. pp. 9299-9320,9262
2. WATERSHEDS. Passed without amendment S. 650, to amend the Watershed Protection and Flood Prevention Act so as to permit any irrigation or reservoir company, water users' association, or similar organization approved by the Secretary of Agriculture to sponsor works or improvement. p. 9292
3. FORESTRY; LANDS. Passed without amendment S. 648, to authorize the Secretary of Agriculture to convey a parcel of forest land to the town of Tellico Plains, Tenn. pp. 9291-2
Passed without amendment S. 302, to authorize appropriation of an additional \$2 million for the purchase of land within the boundaries of the Superior National Forest, Minn. pp. 9293-4

The Interior and Insular Affairs Committee voted to report (but did not actually report) S. 1647, to provide for an exchange of federally owned lands (including Forest Service lands) at the Cedar Breaks National Monument, Utah. p. D438

The Interior and Insular Affairs Committee voted to report (but did not actually report) H. R. 5416, to include within the boundaries of Joshua Tree National Monument in California certain donated lands used in connection with the monument. p. D438

The "Daily Digest" states that the Interior and Insular Affairs Committee "discussed, but took no action on, S. 174, to establish a National Wilderness Preservation System." p. D438

4. FARM MORTGAGE CORPORATION. Passed as reported S. 1040, to abolish the Federal Farm Mortgage Corporation. pp. 9292-3
5. ROADS. The Finance Committee reported H. R. 6713, to amend certain laws relating to the Federal-aid highway program (S. Rept. 367). p. 9253
6. FARM LABOR. Sen. Humphrey expressed concern for the welfare of migratory farm workers, stated that "these workers who help tend the abundance of our tables have long been the poorest and most neglected in our Nation," and inserted a newspaper editorial, "Protecting the Migrant Workers." pp. 9329-30
Sen. Long, Mo., discussed proposed bills to aid migratory farm workers and inserted an article, "Senator Williams Talks Farm Labor." pp. 9283-5
7. FEED GRAINS. Sen. Humphrey inserted a report of this Department on the signup under the feed grains program, "Final Feed Grain Signup Report Shows More Than 26.6 Million Acres," and stated that "It appears that the feed grain program ... has been a success so far as signup is concerned." pp. 9327-8
8. FOREIGN AID. Sen. Javits inserted an editorial, "Debate on Foreign Aid," stating that indications are that the President's foreign aid program "is running into trouble in Congress." p. 9323
Sen. Humphrey inserted a news release from the office of George McGovern, Director, Food For Peace, reporting on the use of surplus food for refugees and homeless families in 22 different countries of the world. p. 9329
Sen. Gruening inserted an article by John K. Galbraith, "A Positive Approach to Economic Aid," and an article by Justice Douglas, "Errors in the Foreign Aid Programs." pp. 9342-6
9. FARM PROGRAM. Sen. Ellender inserted a La. Legislature resolution opposing passage of the omnibus farm bill. p. 9252
10. LEGISLATIVE PROGRAM. Sen. Mansfield announced that H. R. 6713, the Federal-aid highway bill, will be considered later this week. p. 9320

HOUSE

11. APPROPRIATIONS. Began debate on H. R. 7577, the Department of Commerce and general Government matters appropriations for 1962. pp. 9388-94
Rep. Patman said "I was distressed to learn that H. R. 7577 reduced the appropriation for the Small Business Administration from \$18,447,000 to \$17,525,000." p. 9399
12. TRANSPORTATION. Passed as reported H. R. 6775, to provide for the operation of steamship conferences. pp. 9369-72

siles, and naval vessels clearly demonstrates its intent.

(Mr. SHRIVER asked and was given permission to revise and extend his remarks.)

Mr. ARENDS. Mr. Speaker, I yield such time as he may desire to the gentleman from California [Mr. YOUNGER].

Mr. YOUNGER. Mr. Speaker, I take this time to ask the chairman a question. I understand the Secretary of Defense said he would not spend the money authorized with regard to the bomber program even though we later appropriated it. Was that taken into consideration at the time of the authorization of the program?

Mr. VINSON. As stated in the conference report, it was the feeling of the managers on the part of the House as well as on the part of the Senate that it was necessary to have insurance so that should anything happen they would have authority to act. You see, from now on, they cannot buy an aircraft, a missile, or a ship, without specific authorization, and we cannot afford to take a chance. We have got to have the latitude which we gave them, and that cannot be provided unless their is authority to reprogram it should it become necessary.

Mr. YOUNGER. What good does the insurance do if the insurance company will not pay?

Mr. ARENDS. Mr. Speaker, I yield such time as he may desire to the gentleman from California [Mr. HIESTAND].

Mr. HIESTAND. Mr. Speaker, I congratulate the great Committee on Armed Services upon their original recommendations and upon this conference report.

I do this because it reveals their sound judgment in refusing to put all our eggs in one basket, the missile basket. Our progress in missiles has been and is magnificent, and we must push it with all energy and capacity at our command.

However, Mr. Speaker, the missile as a weapon is still unproven. Therefore the extending of a balanced defense and attack program of manned bombers is imperative.

But, Mr. Speaker, we have gone only halfway. We are extending the production program of existing weapons. We have neglected the greatest program weapon system of them all—the great B-70.

Extending the B-70 program this year saves a whole year and perhaps more. Who is to say that we shall not need the B-70, a mach-3, tremendous powered for higher flying bomber than ever before planned will not be needed until 1968 or 1970 or any other date?

The immediate activating of the B-70 program would keep the Soviets off balance for another 10 years. I urge added legislation as immediately as possible.

Mr. ALFORD. Mr. Speaker, how far afield has the Army and the administration gone in the matter of rebuking Maj. Gen. Edwin A. Walker for being an American?

While I will go into detail on this shocking episode in the very near future, I must rise and register my immediate concern over the news reports that I have seen this day.

A fine reward this for 30 years of outstanding military service. A fine

tribute this as the end result of a smutty attack by a smutty little publication that even to this day still should be banned from circulation to our fighting men overseas.

I am shocked at this miscarriage of justice. I am dismayed that more significance is attached to a few words in a scandal sheet than to a magnificent military record and a lifetime of devotion to the ideals of Americanism.

As I have said before, I say again: General Walker's only crime was that he loved America and detested atheistic communism. This will truly be a day of gloating in the Kremlin, for the hands of time on the clock of justice, fairplay and decency have been turned backwards.

Yes; I shall have more to say in the near future. For the moment, however, I want to register the true shame that I feel for such ungrateful treatment of a great American.

This alarming attack on such an outstanding patriot causes all who fight on the side of America to cry out "What on earth is happening here in the land of the free and the home of the brave?" Let our prayer in these days of peril be "God give America a new breath of patriotism."

Mr. VINSON. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

OPERATION OF STEAMSHIP CONFERENCES

Mr. BONNER. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 14, Shipping Act, 1916, is hereby amended as follows:

(a) Insert "(a)" immediately after "First".

(b) Add the following subsection (b) at the end of paragraph "First":

"(b) Charge or enter into any combination, agreement, or understanding, express or implied, to charge any person, solely or in part because he does not agree to or give all or any part of his patronage, higher freight rates or charges than are accorded to any person who does agree to or give such patronage: *Provided, however, That notwithstanding any other provision of this Act, on application the Board shall, after notice, permit the use by any carrier or conference of carriers in foreign commerce of any contract, amendment or modification thereof, which is available to all shippers and consignees on equal terms, and conditions, which provides lower rates to a shipper or consignee who agrees to give all or any part of his patronage to such carrier or conference of carriers and which the Board finds is not intended, and will not be reasonably*

likely, to cause the exclusion of any other carrier from the trade, and which the Board finds will be neither detrimental to the commerce of the United States nor contrary to the public interest, and which expressly (1) assures to the contract shipper as much of the available space on the vessels of the carrier or conference of carriers as is necessary, on reasonable notice, to meet the normal demands of the contract shipper; (2) provides that, whenever a tariff rate for the carriage of goods becomes effective, insofar as it is under the control of the carrier or conference of carriers, it shall not be increased for a reasonable period, but in no case less than ninety days; (3) covers only those goods of the contract shipper as to the shipment of which he has the legal right at the time of shipment to select the carrier; (4) does not require the contract shipper to divert shipment of goods from natural routings not served by the carrier or conference of carriers where direct carriage is available; (5) limits damages recoverable for breach by either party to actual damages to be determined after breach in accordance with the principles of commercial contract law: *Provided, however, That the contract may specify that in the case of a breach by a contract shipper or consignee the damages may be an amount not exceeding the contract rate on the particular shipment, less the cost of handling; (6) permits the contract shipper to terminate at any time without penalty upon ninety days' notice; (7) provides for a spread between ordinary rates and rates charged for contract shippers that the Board finds to be reasonable in all the circumstances but which spread shall in no event be more than 15 per centum of the ordinary rates; and (8) contains such other provisions not inconsistent herewith as the Board shall require or permit. The Federal Maritime Board shall withdraw permission which it has granted under the authority contained in this section for the use of any contract if it finds, after notice and hearing, that the use of such contract tends to cause the elimination from, or prevent the entry into, the trade of any carrier, or is detrimental to the commerce of the United States or contrary to the public interest. The carrier or conference of carriers may on ninety days notice terminate without penalty the contract rate system herein authorized, in whole, or with respect to any commodity or service: *Provided, however, That after such termination the carrier or conference of carriers may not reinstitute such contract rate system or part thereof so terminated without prior Board approval in accordance with the provisions of this section. As used in this section, the term 'contract shipper' means a person other than a carrier or conference of carriers who is a party to a contract the use of which may be permitted under this section.*"*

SEC. 2. Section 15, Shipping Act, 1916, is amended to read as follows:

"SEC. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the Board a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in

this section includes understandings, conferences, and other arrangements.

"The Board shall by order, after notice and hearing, disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations that it finds not contrary to the public interest. No such agreement shall be approved, nor shall continued approval be permitted for any agreement, (1) between carriers or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) which permits shippers who act as carrier agents to represent such carrier in conference activities unless the Board finds that no other qualified person is available, or (3) whose probable effect will be reasonably likely to exclude any other carrier from the trade, or (4) in respect to conference agreements, fails to provide reasonable and equal terms and conditions for the admission and readmission of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership without penalty upon reasonable notice.

"No such agreement shall be approved unless it shall (1) designate a person upon whom service of process may be made within the United States which will be effective against every signatory to such agreement, and (2) contains provisions that every signatory shall provide records or other information, wherever located, required by any order of the Board which contains the minimum notice provisions required by the Administrative Procedures Act (5 U.S.C. 1001 and the following). No conference agreement shall be approved unless the Board finds that it contains effective provisions for policing the obligations under it. The Board shall disapprove any such agreement, after reasonable notice, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for the consideration of shippers' requests and complaints.

"Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Board shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Board; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by the proviso to section 14 First (b) which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, be permitted to take effect without prior approval upon compliance with the publication and filing requirements of section 18(b) hereof and with the provisions of any regulations the Board may adopt. The Board shall disapprove any conference rate, fare, or charge which after hearing it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

"Every agreement, modification, or cancellation lawful under this section, or per-

mitted under section 14 First, shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', and amendments and Acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', and amendments and Acts supplementary thereto.

"Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action."

SEC. 3. Notwithstanding the provisions of sections 14 First and 15 of the Shipping Act, 1916, as amended by this Act, all agreements which are lawful under the Shipping Act, 1916, immediately prior to enactment of this Act, shall remain lawful for one year after enactment of this Act unless disapproved, canceled, or modified by the Board pursuant to the provisions of the Shipping Act, 1916, as amended by this Act, within that year.

SEC. 4. Section 18, Shipping Act, 1916, is hereby amended as follows:

(a) Insert "(a)" immediately after the section number "18".

(b) Add the following subsection 18(b):

"(b) (1) From and after ninety days following enactment hereof every common carrier by water in foreign commerce and every conference of such carriers shall file with the Board and keep open to public inspection tariffs showing all the rates, fares, and charges of such carrier or conference of carriers for transportation between all points on its own route and on any through route which has been established. Such tariffs shall plainly show the places between which freight will be carried, and shall contain the classification of freight, in force, and shall also state separately such terminal or other charge, privilege, or facility under the control of the carrier or conference of carriers which is granted or allowed, and any rules or regulations which in any wise change, effect, or determine any part or the aggregate of such aforesaid rates, or charges, and shall include specimens of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement. Copies of such tariffs shall be made available to any person and a reasonable charge may be made therefor. The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count.

"(2) No change shall be made in the rates, fares, charges, classifications, rules or regulations, which results in an increase in cost to the shipper, nor shall any new or initial rate of any common carrier by water in foreign commerce or conference of such carriers be instituted, except by the publication, and filing, as aforesaid, of a new tariff or tariffs which shall become effective not earlier than thirty days after the date of publication and filing thereof with the Board, and such tariff or tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the time when the rates, fares, charges, classifications, rules or regulations as changed are to become effective: *Provided*, That the Board may, in its discretion and for good cause, allow such changes upon less than the period of thirty days herein specified. Any change in the rates, fares, charges, or classifications, rules or regulations which results in a decreased cost to the shipper may become effective upon the publication and filing with the Board. The term 'tariff' as used in this paragraph shall include any amendment, supplement or reissue.

"(3) No common carrier by water in foreign commerce or conference of such car-

riers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates, and charges which are specified in its tariffs on file with the Board and duly published and in effect at the time; nor shall any such carrier rebate, refund or remit in any manner or by any device any portion of the rates, or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs.

"(4) The Board shall by regulations prescribe the form and manner in which the tariffs required by this section shall be published and filed; and the Board is authorized to reject any tariff filed with it which is not in conformity with this section and with such regulations. Any tariff so rejected by the Board shall be void and its use shall be unlawful.

"(5) Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action."

SEC. 5. Section 19, Shipping Act, 1916, is amended by inserting "(a)" immediately after the section number "19", and adding the following subsection:

"(b) It shall be unlawful for any common carrier by water or any conference of carriers, directly or indirectly, to reduce unreasonably its rates or charges for the purpose of destroying competition or eliminating a competitor: *Provided, however*, That nothing contained in the Act shall be construed to prohibit a common carrier by water or a conference of carriers from reducing its rates or charges in good faith to meet competition. Whoever violates any provision of this subsection (b) shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action."

SEC. 6. Section 20, Shipping Act, 1916, is amended by changing the period at the end thereof to a semicolon and adding the following:

"or to prevent the giving by any common carrier by water which is a party to a conference agreement approved pursuant to section 15 of this Act to, or the soliciting or receipt by the conference or any person, firm, corporation, or agency designated by the conference, information for the purpose of determining whether a shipper or consignee has committed a breach of an agreement with the conference or its member lines or of determining whether a conference member has committed a breach of the conference agreement, or for the purpose of compiling statistics of cargo movement."

SEC. 7. Section 21, Shipping Act, 1916, is amended to read as follows:

"SEC. 21. (a) That the Board may require any common carrier by water, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof to file with it any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this Act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the Board so requires, and shall be furnished in the form and within the time prescribed by the Board. Every common carrier by water engaged in the foreign commerce of the United States shall (1) designate a person upon whom service of process may be made within the United States in any action, proceeding, or investigation brought by or on behalf of the United States or any agency thereof, and (2) provide records or other information, wherever located, required by any order of the Board which contains the minimum notice provisions required by the Administrative Procedure Act

(5 U.S.C. 1001 and the following). Whoever fails to file any report, account, record, rate, charge, memorandum, or other information as required by this section shall forfeit to the United States the sum of \$100 for each day of such default.

"(b) Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than \$1,000 or imprisonment for not more than one year, or to both such fine and imprisonment.

"(c) The Board shall make such rules and regulations as may be necessary to carry out sections 14 First (b), 15, 18(b), 19(b), 20, and 21 of this Act."

Mr. BONNER (interrupting the reading). Mr. Speaker, I ask unanimous consent that further reading of the bill be dispensed with, and that I be given an opportunity to explain it.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. BONNER. Mr. Speaker, the bill H.R. 6775 is the result of over 2½ years' work on the part not only of the Committee on Merchant Marine and Fisheries, but also of the Committee on the Judiciary.

The occasion for these intensive studies was a decision by the Supreme Court in May 1958 which cast into doubt the validity of a system that had been utilized by very many of both American and foreign-flag steamship companies during a period of over 40 years. Under prevailing practices, lines serving the same area have been forming themselves into conferences to regulate rates and practices. This has the sanction of the Shipping Act of 1916.

As a part of their activity and in order to strengthen their position against casual, and sometimes irresponsible, competition, steamship lines have utilized a system whereby in exchange for a contract for exclusive patronage contract shippers would have the benefit of lower rates than those available to non-contract shippers. The Supreme Court in the particular case held that this device was being utilized to stifle competition and as such was illegal under the Shipping Act of 1916.

The efforts of the committee have been devoted to preserving the essential features of the dual rate system while imposing safeguards against violation of the spirit or letter of the antitrust acts.

It is my belief that the bill as presented here today contains a maximum protection against practices inconsistent with the U.S. view of protection against monopolies. At the same time, it affords necessary protection to both the American merchant marine and its foreign competitors to enable them to continue to render services to our American economy in a manner calculated to insure stability of operations desired by shippers as well as carriers.

While it places certain burdens on foreign-flag lines by way of requiring them to make available records of their business in the American trades, these provisions merely recast existing law that has been in effect since 1916 and

do not represent any departure from or addition to requirements presently in existence. Their inclusion was dictated by the fact that, as a result of activity growing out of the investigation so ably conducted by the Antitrust Subcommittee of the Committee on the Judiciary, the procedures contained in the 1916 act have proven ineffective to obtain promptly information required by the Federal Maritime Board and the Department of Justice to effectively process violations of our laws.

The procedures set forth in this bill requiring the appointment of an individual in this country to accept process on behalf of all members of each conference will, in the opinion of the committee, be more effective in obtaining the information without attempting to extend American jurisdiction beyond its present limits.

The bill is necessary if we are going to try to perpetuate and maintain our American-flag merchant marine for the benefit of the economy and the national defense of our country.

(Mr. CELLER (at the request of Mr. BONNER) was given permission to extend his remarks at this point in the RECORD.)

Mr. CELLER. Mr. Speaker, I wholeheartedly support H.R. 6775 with the amendments reported by the Committee on Merchant Marine and Fisheries. This bill is the product of nearly 3 years of painstaking and constructive labors in the public interest by the distinguished chairman of that committee, the gentleman from North Carolina [HERBERT C. BONNER].

Because the Antitrust Subcommittee of the Committee on the Judiciary, of which I am chairman, has conducted during the same 3-year period an extensive study of antitrust problems and competitive practices in the ocean freight industry, the gentleman from North Carolina invited my aid in the development of this bill. We have worked together closely and harmoniously. The Merchant Marine Committee's staff and the staff of the Antitrust Subcommittee have worked long and hard in resolving differences and in securing a bill that would be in the best interests of the public as well as of the steamship industry.

These differences concern the weight that should be accorded traditional antitrust concepts of competition as applied to international shipping. I would be less than candid if I did not state that the bill does not place as much reliance upon antitrust considerations as I feel desirable. Nevertheless, the bill represents a sincere effort to compromise disparate points of view.

It offers to the steamship industry legalization of the dual rate system that it has sought since the Supreme Court in May 1958 found that practice to be unlawful in the *Isbrandtsen* case. At the same time, however, this bill offers substantial protections to shippers, independent maritime operators, and to the general public.

Although dual rate systems would be permitted under this bill, they require advance approval by the Federal Maritime Board and that approval can be

granted only if specified conditions designed to protect others are met.

The very heart of these protections stems from the committee amendments. These amendments insure—although certainly without them a public-spirited Maritime Board would insist upon it in any event—that no dual rate system will be approved if it is designed to be used or is used as a means to drive competing independent steamship operators out of business. In other words, this provision insures that if conferences employ a dual rate system they can do so provided it is not used to eliminate the independent status of nonconference members. Thus, the provision recognizes the need for coexistence between independent operators and conference members.

There exists today, under the moratorium legislation passed by the Congress temporarily authorizing dual rates, a number of dual rate systems which meet this test. They offer incentives to shippers to sign exclusive patronage contracts with conferences, but yet are not predatory, so that they drive existing nonconference operators out of the trade, force them to join conferences, or bar their entry into the trade.

In addition, this bill would further protect shippers, independent operators, and the general public by requiring the Maritime Board to withdraw permission for the usage of any dual rate system if it finds that the system tends to cause the elimination of independent carriers from the trade either by forcing them out of business or requiring them to join a conference. The Board is also required to withdraw permission if it finds that any such system is detrimental to the commerce of the United States or contrary to the public interest.

Yet another protective clause insures that the Board will not approve an antitrust exemption for any agreement if its probable effect will be reasonably likely to exclude another carrier from the trade either by driving it out of business or requiring it to join a conference.

Thus, in total effect, this bill makes specific what the Congress has always assumed, namely, that to the maximum extent possible every regulatory agency in the United States is required to carry out its responsibilities in conformity with the antitrust policies upon which our entire American free enterprise system is based.

There are other protective clauses in this bill which are fully spelled out in the committee report but I need not repeat them at this point. However, I do wish to emphasize, Mr. Speaker, that this bill is the product of careful and harmonious work between two standing committees of the House. It is calculated to effectuate the legislation requested by our maritime industry while at the same time preserving to shippers, independent operators, and the general public protections that they need.

(Mr. McCULLOCH (at the request of Mr. TOLLEFSON) was given permission to extend his remarks at this point in the RECORD.)

Mr. McCULLOCH. Mr. Speaker, over 3 years have passed since the Supreme Court handed down its decision in the

Isbrandtsen case outlawing dual rate shipping agreements. Our action, today, culminates 3 years of study in this field by two committees of the House—the Merchant Marine and Fisheries Committee and the Antitrust Subcommittee of the Judiciary Committee, the latter of which I am a member.

As a result of our study of the problems which triggered this measure, I approach its enactment into law with mixed feelings. On the one hand, I well realize the sense of urgency for immediate consideration. Since the temporary dual rate legislation passed in the 85th Congress expires on June 30, we must act quickly or the entire industry will suffer. I, therefore, intend to vote for the proposal.

On the other hand, it seems regrettable to me that it is necessary to act before the completion of the Antitrust Subcommittee's report on the ocean freight industry—a report that consumed years of study and preparation and which included some of the most thorough and extensive hearings ever undertaken by this body. That report, I am informed, is in the final stages of preparation and should be available in little more than a month.

But despite my reservations on that score, because another committee is vested with primary jurisdiction in this matter, I shall content myself with these few remarks rather than impeding the passage of H.R. 6775. I adopt this course despite the fact that I entertain some reservations over certain substantive portions of the bill.

I am particularly concerned over what might be interpreted abroad as an unwarranted extension of American regulatory authority over international shipping. We must never forget, in our zeal to regulate the foreign commerce of the United States, that we are also, by our action, regulating the foreign commerce of other nations which trade with us. How far we can legitimately or wisely—and I stress the term "wisely"—go, without doing more harm than good, is open to question. Certainly, with the passage of this bill, we will have approached close to the limit, if we have not transcended it.

Only time and experience will tell the story. But if difficulty is experienced under this measure when it becomes law, if the industry or our foreign relations should suffer under its administration, then the Congress must act promptly to remedy such unintended and unwanted situation.

Mr. TOLLEFSON. Mr. Speaker, I yield myself such time as I may consume.

In the report which accompanies the bill I have expressed my views concerning it, and have raised questions with respect to some of the provisions of the measure. Nevertheless, I shall vote for the bill because of the need for legalizing the conference contract system under which shipping lines have operated for many years. The lines are now operating under interim legislation which expires June 30. Unless the interim legislation is extended the other body must act upon our House measure within the next couple of weeks.

Mr. Speaker, I am concerned about the authority which this measure seeks to give our Government. It would authorize the Government to regulate international shipping. No other nation has sought this power to my knowledge. The foreign commerce of the United States is the foreign commerce of other nations as well. We should not seek to regulate it unilaterally for fear of invading the sovereignty of other nations.

The bill also seeks to give our Government jurisdiction over foreign owned documents and papers located abroad. This, in my estimation, is an affront to foreign nations who have written strong letters of protest to our State Department.

These provisions together with others mentioned in my views as contained in the report could well cause foreign shipping lines to withdraw from conferences of which American operators are members. If they do so, the conference system will fail, in my opinion, and the American ship operator could then well be driven out of business. I do not believe our operators can successfully compete with foreign ship operators without a conference system.

Mr. Speaker, hearings before our committee and hearings before the Judiciary Committee have shown some alleged technical violations by domestic and foreign shipping lines. May I call attention to the fact that 95 percent of the violations have nothing to do with the dual rate system which this bill seeks to legalize.

As I stated in my addition views in the report, I trust that the other body will give consideration to the questions raised, and will consider the advisability of amending the measure in such a way as to eliminate its objectionable features.

The SPEAKER pro tempore. The Clerk will report the committee amendments.

The Clerk read as follows:

On page 2, line 10, after the word "finds" and before the words "will be" insert the following: "is not intended, and will not be reasonably likely, to cause the exclusion of any other carrier from the trade, and which the Board finds".

On page 3, line 18, after the word "contract" and before the word "is", insert the following: "tends to cause the elimination from, or prevent the entry into, the trade of any carrier, or".

On page 5, line 20, after the word "or", insert the following:

"(3) whose probable effect will be reasonably likely to exclude any other carrier from the trade, or".

On page 5, line 20, delete "(3)" and insert in lieu thereof "(4)".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DISTRICT OF COLUMBIA BUSINESS

The SPEAKER pro tempore. This is District of Columbia Day. The Chair recognizes the gentleman from South Carolina [Mr. McMILLAN] chairman of the Committee on the District of Columbia.

EXAMINATION OF MINISTERS IN DISTRICT OF COLUMBIA COURTS

Mr. McMILLAN. Mr. Speaker, I call up the bill (H.R. 5486) to prohibit the examination in District of Columbia courts of any minister of religion in connection with any communication made to him in his professional capacity, without the consent of the party to such communication, and I ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

The Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no priest, clergyman, rabbi, accredited religious practitioner, or other duly licensed, ordained, or consecrated minister of any religion shall be examined in any civil or criminal proceedings in the courts of the District of Columbia—

(1) with respect to any confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making such confession or communication, or

(2) with respect to any communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking such advice, or

(3) with respect to any communication made to him, in his professional capacity, by either spouse, in connection with any effort to reconcile estranged spouses, without the consent of the spouse making the communication.

With the following committee amendment:

Page 1, line 3, strike out "accredited religious practitioner" and insert "practitioner of Christian Science"

The committee amendment was agreed to.

Mr. MULTER. Mr. Speaker, the purpose of this legislation is to prohibit the examination in the courts of the District of Columbia of any priest, clergyman, rabbi, practitioner of Christian Science, or other minister of any religion in connection with any communication made to him in his professional capacity, without the consent of the party or parties to such communication.

It is the intent of this committee that this privileged status shall apply to such communications regardless of the religious affiliation, if any, of the communicant. That is, he need not be a member of the same church, faith, or religious body as the minister to whom the communication is made. Indeed, he need not be a subscriber to any religious belief whatever, so long as the communication was made in good faith as an expression of penitence and a search for mental and spiritual guidance.

Under existing law in the District of Columbia, physicians and lawyers are the only professional persons who are specifically exempt from testifying in regard to information obtained in their professional capacity; this does not apply, however, in criminal cases where the accused is charged with causing

87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

JUNE 13, 1961

Read twice and referred to the Committee on Commerce

AN ACT

To amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 14, Shipping Act, 1916, is hereby amended as
4 follows:

5 (a) Insert “(a)” immediately after “First”.

6 (b) Add the following subsection (b) at the end of
7 paragraph “First”:

8 “(b) Charge or enter into any combination, agreement,
9 or understanding, express or implied, to charge any person,
10 solely or in part because he does not agree to or give all or
11 any part of his patronage, higher freight rates or charges

1 than are accorded to any person who does agree to or give
2 such patronage: *Provided, however,* That notwithstanding
3 any other provision of this Act, on application the Board
4 shall, after notice, permit the use by any carrier or confer-
5 ence of carriers in foreign commerce of any contract, amend-
6 ment or modification thereof, which is available to all
7 shippers and consignees on equal terms, and conditions, which
8 provides lower rates to a shipper or consignee who agrees to
9 give all or any part of his patronage to such carrier or con-
10 ference of carriers and which the Board finds is not intended,
11 and will not be reasonably likely, to cause the exclusion of
12 any other carrier from the trade, and which the Board finds
13 will be neither detrimental to the commerce of the United
14 States nor contrary to the public interest, and which expressly
15 (1) assures to the contract shipper as much of the available
16 space on the vessels of the carrier or conference of carriers as is
17 necessary, on reasonable notice, to meet the normal demands
18 of the contract shipper; (2) provides that, whenever a tariff
19 rate for the carriage of goods becomes effective, insofar as
20 it is under the control of the carrier or conference of carriers,
21 it shall not be increased for a reasonable period, but in no
22 case less than ninety days; (3) covers only those goods of
23 the contract shipper as to the shipment of which he has the
24 legal right at the time of shipment to select the carrier; (4)
25 does not require the contract shipper to divert shipment of

1 goods from natural routings not served by the carrier or con-
2 ference of carriers where direct carriage is available; (5)
3 limits damages recoverable for breach by either party to
4 actual damages to be determined after breach in accordance
5 with the principles of commercial contract law: *Provided,*
6 *however,* That the contract may specify that in the case of
7 a breach by a contract shipper or consignee the damages
8 may be an amount not exceeding the contract rate on the
9 particular shipment, less the cost of handling; (6) permits
10 the contract shipper to terminate at any time without
11 penalty upon ninety days' notice; (7) provides for a spread
12 between ordinary rates and rates charged for contract
13 shippers that the Board finds to be reasonable in all the cir-
14 cumstances but which spread shall in no event be more than
15 15 per centum of the ordinary rates; and (8) contains such
16 other provisions not inconsistent herewith as the Board shall
17 require or permit. The Federal Maritime Board shall with-
18 draw permission which it has granted under the authority
19 contained in this section for the use of any contract if it finds,
20 after notice and hearing, that the use of such contract tends to
21 cause the elimination from, or prevent the entry into, the
22 trade of any carrier, or is detrimental to the commerce of the
23 United States or contrary to the public interest. The
24 carrier or conference of carriers may on ninety days
25 notice terminate without penalty the contract rate

1 system herein authorized, in whole, or with respect
2 to any commodity or service: *Provided, however,* That after
3 such termination the carrier or conference of carriers
4 may not reinstitute such contract rate system or part thereof
5 so terminated without prior Board approval in accordance
6 with the provisions of this section. As used in this section,
7 the term 'contract shipper' means a person other than a car-
8 rier or conference of carriers who is a party to a contract the
9 use of which may be permitted under this section."

10 SEC. 2. Section 15, Shipping Act, 1916, is amended to
11 read as follows:

12 "SEC. 15. That every common carrier by water, or
13 other person subject to this Act, shall file immediately
14 with the Board a true copy, or, if oral, a true and com-
15 plete memorandum, of every agreement with another such
16 carrier or other person subject to this Act, or modification
17 or cancellation thereof, to which it may be a party or con-
18 form in whole or in part, fixing or regulating transportation
19 rates or fares; giving or receiving special rates, accommo-
20 dations, or other special privileges or advantages; controlling,
21 regulating, preventing, or destroying competition; pooling
22 or apportioning earnings, losses, or traffic; allotting ports or
23 restricting or otherwise regulating the number and char-
24 acter of sailings between ports; limiting or regulating in any
25 way the volume or character of freight or passenger traffic
26 to be carried; or in any manner providing for an exclusive.

1 preferential, or cooperative working arrangement. The
2 term 'agreement' in this section includes understandings,
3 conferences, and other arrangements.

4 "The Board shall by order, after notice and hearing,
5 disapprove, cancel, or modify any agreement, or any modi-
6 fication or cancellation thereof, whether or not previously
7 approved by it, that it finds to be unjustly discriminatory
8 or unfair as between carriers, shippers, exporters, importers,
9 or ports, or between exporters from the United States and
10 their foreign competitors, or to operate to the detriment of
11 the commerce of the United States, or to be in violation
12 of this Act, and shall approve all other agreements, modifi-
13 cations, or cancellations that it finds not contrary to the
14 public interest. No such agreement shall be approved, nor
15 shall continued approval be permitted for any agreement,
16 (1) between carriers or conferences of carriers serving dif-
17 ferent trades that would otherwise be naturally competitive,
18 unless in the case of agreements between carriers, each car-
19 rier, or in the case of agreements between conferences, each
20 conference, retains the right of independent action, or (2)
21 which permits shippers who act as carrier agents to repre-
22 sent such carrier in conference activities unless the Board
23 finds that no other qualified person is available, or (3)
24 whose probable effect will be reasonably likely to exclude
25 any other carrier from the trade, or (4) in respect to

1 conference agreements, fails to provide reasonable and
2 equal terms and conditions for the admission and re-
3 admission of other qualified carriers in the trade, or fails
4 to provide that any member may withdraw from member-
5 ship without penalty upon reasonable notice.

6 “No such agreement shall be approved unless it shall
7 (1) designate a person upon whom service of process
8 may be made within the United States which will be effec-
9 tive against every signatory to such agreement, and (2)
10 contains provisions that every signatory shall provide rec-
11 ords or other information, wherever located, required by any
12 order of the Board which contains the minimum notice
13 provisions required by the Administrative Procedures Act
14 (5 U.S.C. 1001 and the following). No conference agree-
15 ment shall be approved unless the Board finds that it con-
16 tains effective provisions for policing the obligations under
17 it. The Board shall disapprove any such agreement, after
18 reasonable notice, on a finding of inadequate policing of the
19 obligations under it, or of failure or refusal to adopt and
20 maintain reasonable procedures for the consideration of
21 shippers’ requests and complaints.

22 “Any agreement and any modification or cancellation
23 of any agreement not approved, or disapproved, by the
24 Board shall be unlawful, and agreements, modifications, and
25 cancellations shall be lawful only when and as long as

1 approved by the Board; before approval or after disapproval
2 it shall be unlawful to carry out in whole or in part, directly
3 or indirectly, any such agreement, modification, or cancel-
4 lation; except that tariff rates, fares, and charges, and classi-
5 fications, rules, and regulations explanatory thereof (includ-
6 ing changes in special rates and charges covered by the
7 proviso to section 14 First (b) which do not involve a
8 change in the spread between such rates and charges and
9 the rates and charges applicable to noncontract shippers)
10 agreed upon by approved conferences, and changes and
11 amendments thereto, if otherwise in accordance with law,
12 be permitted to take effect without prior approval upon
13 compliance with the publication and filing requirements of
14 section 18 (b) hereof and with the provisions of any regula-
15 tions the Board may adopt. The Board shall disapprove
16 any conference rate, fare, or charge which after hearing it
17 finds to be so unreasonably high or low as to be detrimental
18 to the commerce of the United States.

19 "Every agreement, modification, or cancellation lawful
20 under this section, or permitted under section 14 First, shall
21 be excepted from the provisions of the Act approved July
22 2, 1890, entitled 'An Act to protect trade and commerce
23 against unlawful restraints and monopolies', and amendments
24 and Acts supplementary thereto, and the provisions of
25 sections 73 to 77, both inclusive, of the Act approved

1 August 27, 1894, entitled 'An Act to reduce taxation, to
2 provide revenue for the Government, and for other purposes',
3 and amendments and Acts supplementary thereto.

4 "Whoever violates any provision of this section shall be
5 liable to a penalty of not more than \$1,000 for each day such
6 violation continues, to be recovered by the United States in a
7 civil action."

8 SEC. 3. Notwithstanding the provisions of sections 14
9 First and 15 of the Shipping Act, 1916, as amended by this
10 Act, all agreements which are lawful under the Shipping Act,
11 1916, immediately prior to enactment of this Act, shall re-
12 main lawful for one year after enactment of this Act unless
13 disapproved, canceled, or modified by the Board pursuant to
14 the provisions of the Shipping Act, 1916, as amended by this
15 Act, within that year.

16 SEC. 4. Section 18, Shipping Act, 1916, is hereby
17 amended as follows:

18 (a) Insert "(a)" immediately after the section number
19 "18".

20 (b) Add the following subsection 18 (b) :

21 "(b) (1) From and after ninety days following enact-
22 ment hereof every common carrier by water in foreign com-
23 merce and every conference of such carriers shall file with
24 the Board and keep open to public inspection tariffs showing
25 all the rates, fares, and charges of such carrier or conference

1 of carriers for transportation between all points on its own
2 route and on any through route which has been established.
3 Such tariffs shall plainly show the places between which
4 freight will be carried, and shall contain the classification of
5 freight in force, and shall also state separately such terminal
6 or other charge, privilege, or facility under the control of the
7 carrier or conference of carriers which is granted or allowed,
8 and any rules or regulations which in any wise change, effect,
9 or determine any part or the aggregate of such aforesaid
10 rates, or charges, and shall include specimens of any bill of
11 lading, contract of affreightment, or other document evidenc-
12 ing the transportation agreement. Copies of such tariffs shall
13 be made available to any person and a reasonable charge may
14 be made therefor. The requirements of this section shall not
15 be applicable to cargo loaded and carried in bulk without
16 mark or count.

17 “(2) No change shall be made in the rates, fares,
18 charges, classifications, rules or regulations, which results in
19 an increase in cost to the shipper, nor shall any new or
20 initial rate of any common carrier by water in foreign com-
21 merce or conference of such carriers be instituted, except
22 by the publication, and filing, as aforesaid, of a new tariff or
23 tariffs which shall become effective not earlier than thirty
24 days after the date of publication and filing thereof with the
25 Board, and such tariff or tariffs shall plainly show the changes

1 proposed to be made in the tariff or tariffs then in force and
2 the time when the rates, fares, charges, classifications, rules
3 or regulations as changed are to become effective: *Provided*,
4 That the Board may, in its discretion and for good cause,
5 allow such changes upon less than the period of thirty days
6 herein specified. Any change in the rates, fares, charges,
7 or classifications, rules or regulations which results in a de-
8 creased cost to the shipper may become effective upon the
9 publication and filing with the Board. The term 'tariff' as
10 used in this paragraph shall include any amendment, supple-
11 ment or reissue.

12 “(3) No common carrier by water in foreign commerce
13 or conference of such carriers shall charge or demand or
14 collect or receive a greater or less or different compensation
15 for the transportation of property or for any service in con-
16 nection therewith than the rates, and charges which are
17 specified in its tariffs on file with the Board and duly pub-
18 lished and in effect at the time; nor shall any such carrier
19 rebate, refund or remit in any manner or by any device any
20 portion of the rates, or charges so specified, nor extend or
21 deny to any person any privilege or facility, except in ac-
22 cordance with such tariffs.

23 “(4) The Board shall by regulations prescribe the
24 form and manner in which the tariffs required by this section
25 shall be published and filed; and the Board is authorized

1 to reject any tariff filed with it which is not in conformity
2 with this section and with such regulations. Any tariff so
3 rejected by the Board shall be void and its use shall be
4 unlawful.

5 “(5) Whoever violates any provision of this section
6 shall be liable to a penalty of not more than \$1,000 for
7 each day such violation continues, to be recovered by the
8 United States in a civil action.”

9 SEC. 5. Section 19, Shipping Act, 1916, is amended
10 by inserting “(a)” immediately after the section number
11 “19”, and adding the following subsection:

12 “(b) It shall be unlawful for any common carrier by
13 water or any conference of carriers, directly or indirectly,
14 to reduce unreasonably its rates or charges for the purpose
15 of destroying competition or eliminating a competitor:
16 *Provided, however,* That nothing contained in the Act shall
17 be construed to prohibit a common carrier by water or a
18 conference of carriers from reducing its rates or charges in
19 good faith to meet competition. Whoever violates any pro-
20 vision of this subsection (b) shall be liable to a penalty of
21 not more than \$1,000 for each day such violation continues,
22 to be recovered by the United States in a civil action.”

23 SEC. 6. Section 20, Shipping Act, 1916, is amended
24 by changing the period at the end thereof to a semicolon
25 and adding the following:

1 “or to prevent the giving by any common carrier by water
2 which is a party to a conference agreement approved pur-
3 suant to section 15 of this Act to, or the soliciting or receipt
4 by the conference or any person, firm, corporation, or agency
5 designated by the conference, information for the purpose
6 of determining whether a shipper or consignee has com-
7 mitted a breach of an agreement with the conference or its
8 member lines or of determining whether a conference mem-
9 ber has committed a breach of the conference agreement,
10 or for the purpose of compiling statistics of cargo move-
11 ment.”

12 SEC. 7. Section 21, Shipping Act, 1916, is amended to
13 read as follows:

14 “SEC. 21. (a) That the Board may require any com-
15 mon carrier by water, or other person subject to this Act, or
16 any officer, receiver, trustee, lessee, agent, or employee
17 thereof, to file with it any periodical or special report,
18 or any account, record, rate, or charge, or any memorandum
19 of any facts and transactions appertaining to the business of
20 such carrier or other person subject to this Act. Such re-
21 port, account, record, rate, charge, or memorandum shall
22 be under oath whenever the Board so requires, and shall be
23 furnished in the form and within the time prescribed by the
24 Board. Every common carrier by water engaged in the
25 foreign commerce of the United States shall (1) designate

1 a person upon whom service of process may be made within
2 the United States in any action, proceeding, or investigation
3 brought by or on behalf of the United States or any agency
4 thereof, and (2) provide records or other information, wher-
5 ever located, required by any order of the Board which
6 contains the minimum notice provisions required by the
7 Administrative Procedure Act (5 U.S.C. 1001 and the
8 following). Whoever fails to file any report, account, rec-
9 ord, rate, charge, memorandum, or other information as
10 required by this section shall forfeit to the United States
11 the sum of \$100 for each day of such default.

12 “(b) Whoever willfully falsifies, destroys, mutilates, or
13 alters any such report, account, record, rate, charge, or
14 memorandum, or willfully files a false report, account, record,
15 rate, charge, or memorandum shall be guilty of a misde-
16 meanor, and subject upon conviction to a fine of not more
17 than \$1,000, or imprisonment for not more than one year,
18 or to both such fine and imprisonment.

19 “(c) The Board shall make such rules and regulations
20 as may be necessary to carry out sections 14 First (b), 15,
21 18 (b), 19 (b), 20, and 21 of this Act.”

Passed the House of Representatives June 12, 1961.

Attest:

RALPH R. ROBERTS,

Clerk.

AN ACT

To amend the Shipping Act, 1916, as amended,
to provide for the operation of steamship
conferences.

JUNE 13, 1961

Read twice and referred to the Committee on
Commerce

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE
(For information only;
should not be quoted
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HIGHLIGHTS: Senate passed farm bill. House began debate on farm bill. House received conference report on Interior appropriation bill (includes Forest Service). House committee voted to report proposed Youth Opportunities Act (including Youth Conservation Corps).

HOUSE

- 1. FARM PROGRAM.** Began debate on H. R. 8230, the omnibus farm bill. The bill is to be read for amendment today, July 27. pp. 12476-81, 12482-8, 12490-512
- 2. INTERIOR AND RELATED AGENCIES APPROPRIATION BILL, 1962.** Received the conference report on this bill, H. R. 6345 (H. Rept. 797) (pp. 12473-6). At the end of this Digest is a table showing the action of the conferees on Forest Service items and excerpts from the report.
- 3. EMPLOYMENT; YOUTH CONSERVATION CORPS.** The Education and Labor Committee voted to report (but did not actually report) with amendments H. R. 7536, to authorize pilot training and employment programs for youth, including on-the-job and other appropriate training, local public service programs, and conservation programs. p. D619
- 4. TRANSPORTATION.** The Subcommittee on Coast Guard, Coast and Geodetic Survey, and Navigation of the Merchant Marine and Fisheries Committee voted to report with amendments to the full committee H. R. 4299, to provide for the operation of steamship conferences. p. D619

5. TARIFFS. The "Daily Digest" states that, "Conferees, in executive session, agreed to file a conference report on the differences between the Senate- and House-passed versions of H. R. 6611, reducing from \$500 to \$100 the duty-free allowance permitted returning resident travelers. As agreed by the conferees, the House would accept the amendments of the Senate, including that amendment which would establish a \$200 maximum amount for goods from the Virgin Islands." p. D620

6. AUTOMATION. Rep. Bass discussed the problem of automation and unemployment and inserted an article, "Technological Change and Unemployment." pp. 12512-7
Rep. Curtis inserted a schedule of speeches before the House Republican policy committee on automation and employment, including a scheduled speech on agricultural marginal workers. p. 12519

SENATE

7. FARM PROGRAM. Passed with amendments S. 1643, the omnibus farm bill (pp. 12540-604). A motion by Sen. Ellender to reconsider the votes by which the bill was passed was tabled (p. 12604).

Agreed to the following amendments:

By Sen. McCarthy, to include turkey hatching eggs and chicken hatching eggs under the marketing order provisions of the bill so as to make them eligible for marketing orders. p. 12551

By Sen. Mundt, "to strike from the bill a section which provides for the depletion of the customary procedure which has been followed in Public Law 480 operations, requiring annual payments to be made in return for the farm products which are sold." Sen. Mundt explained that the amendment restores "the language of Public Law 480 as it has always been operated." p. 12555

By Sen. Church, to exclude honey from the marketing order provisions of the bill. pp. 12558-64

By Sen. Kefauver, 50 to 39, to strike out sec. 401 (c) of the bill relating to farm cooperatives which would have provided that the acquisition by one cooperative (coming within the scope of the Capper-Volstead Act) of the assets of another such cooperative or any noncooperative business firm, or the merger or consolidation of such a cooperative with another cooperative or other business firm, would be legal if it did not result in an undue enhancement of price (pp. 12571-8). Later a proposed amendment by Sen. Long, La., to restore the language of sec. 401 (c) in modified form was tabled by a vote of 41 to 37 on a motion by Sen. Kefauver (pp. 12582-97).

By Sen. Yarborough, to exclude lambs from the marketing order provisions of the bill. pp. 12578-80

Rejected the following amendments:

By Sen. Williams, Del., 59 to 36, to strike out Subtitle C of the bill extending the feed grains program for one year. pp. 12544-51

By Sen. Kefauver, 53 to 40, to amend the language of the bill affirming the right of farmer cooperatives to act jointly in a federation of cooperative associations, or through agencies in common, in performing those acts which farmers acting together in one such association may lawfully perform, so as to provide, as Sen. Kefauver explained, that this language "does not remove the applicability of the Sherman Act." pp. 12564-71

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OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

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HIGHLIGHTS: Senate committee voted to report Delaware River Basin Compact bill. Rep. May urged increased production and stockpiling of sugar. Rep. Findley criticized food distribution program.

SENATE

1. WATER RESOURCES. The Judiciary Committee voted to report (but did not actually report) H. J. Res. 225, granting the consent of Congress to the Delaware River Basin Compact. p. D779
2. TRANSPORTATION. The Commerce Committee voted to report (but did not actually report with amendment H. R. 6775, to provide for the operation of steamship conferences. p. D778
~~The Commerce Committee reported without amendment H. R. 2429, to prohibit the destruction of, or injury to, any freight or express moving in interstate or foreign commerce (S. Rept. 827). p. 16193~~
3. PERSONNEL. The Commerce Committee reported without amendment S. 2236, to authorize the Secretary of Commerce to employ aliens in a scientific or technical capacity (S. Rept. 825). p. 16193
4. ADMINISTRATIVE ORDERS. The Judiciary Committee voted to report (but did not actually report) H. R. 5656, to provide reasonable notice of applications to

the U. S. courts of appeals for interlocutory relief against the orders of certain administrative agencies. p. D779

5. STATE-JUSTICE APPROPRIATION BILL, 1962. Continued debate on an amendment to this bill, H. R. 7371, to provide for a 2-year extension of the Civil Rights Commission. pp. 16206-13, 16215-8, 16227-9, 16242-61
6. VIRGIN ISLANDS. Received from GAO "a report on the review of certain activities of the government of the Virgin Islands of the United States, fiscal year 1960." p. 16192
7. FARM LABOR. Sen. Keating submitted amendments intended to be proposed to H. R. 2010, to amend and extend the Mexican farm labor program. p. 16193
8. PEACE CORPS. Sen. Humphrey inserted the text of President Kennedy's remarks to Peace Corps volunteers departing for Ghana and Tanganyika in which he stressed the importance of the Peace Corps program. pp. 16236-7
9. ELECTRIFICATION. Sen. Gruening discussed the importance of developing the power resources of Alaska and inserted an article, "The Sitka Blue Lake Hydroelectric Story." pp. 16218-9
10. WET LANDS; WATERFOWL. Sen. Humphrey commended the passage by the Senate of H. R. 7391, to authorize appropriations for a 5-year period of not to exceed \$50 million for the acquisition of wet lands and other essential waterfowl habitat, as an important step in the preservation of our waterfowl population. p. 16237
11. SALINE WATER. Passed over, at the request of Sen. Hart, S. 2156, to expand and extend the saline water conversion program. p. 16204

HOUSE

12. SMALL BUSINESS. Passed without amendment H. R. 8922, to increase by \$20 million the amount available for regular business loans under the Small Business Act. p. 16284
13. PERSONNEL. The Armed Services Committee voted to report (but did not actually report) with amendments H. R. 8765, to amend and clarify the reemployment provisions of the Universal Military Training and Service Act. p. D781
Rep. Jensen discussed his bill, H. R. 8607, and several others, to reduce nonessential Federal personnel by attrition until a 10 percent reduction has been achieved. p. 16303
14. EDUCATION. The Education and Labor Committee reported with amendments H. R. 8890, to amend Public Law 815 and Public Law 874, 81st Congress, so as to extend provisions for Federal assistance for schools in federally impacted areas for an additional year and to extend for one year the student loan program of title II of the National Defense Education Act of 1958 (H. Rept. 1063), and (without amendment) H. R. 8900, to authorize assistance to public and other nonprofit institutions of higher education in financing the construction, rehabilitation, or improvement of needed academic and related facilities, and to authorize financial assistance for undergraduate study in such institutions (H. Rept. 1064). p. 16333
Rep. Martin said, "I hope that the House will reject both of these pieces of legislation because of the manner in which they have been presented to us." p. 16325

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE
(For information only;
should not be quoted
or cited)

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HIGHLIGHTS: Both Houses agreed to conference report on foreign aid authorization bill. House subcommittee voted to report wheat bills. Several Representatives discussed sugar legislation. Senate passed saline water bill. Senate committees reported bills to: Consent to Delaware River Basin Compact. Provide for operation of steamship conferences.

SENATE

1. **FOREIGN AID.** Both Houses agreed to (by votes of 69 to 24 in the Senate and 260 to 132 in the House) the conference report on S. 1983, the foreign aid authorization bill. This bill will now be sent to the President. See Digest 151 for items of interest. pp. 16566-85, 16588-605, 16717-27
2. **SALINE WATER.** Passed with amendments H. R. 7916, to extend and expand the saline water conversion program by authorizing the appropriation of \$100 million for the program for fiscal years 1962 to 1971 (pp. 16607-28). Agreed to an amendment by Sen. Monroney (for himself and Sens. Kerr and Gore) authorizing the appropriation of \$100 million (rather than \$75 million as reported out of committee) for the program during the ten-year period (pp. 16608-16). Consideration of a similar bill, S. 2156, was indefinitely postponed (p. 16628).
3. **WATER RESOURCES.** The Judiciary Committee reported with amendment H. J. Res. 225, to grant the consent of Congress to the Delaware River Basin Compact (S. Rept. 854). p. 16538

4. TRANSPORTATION. The Commerce Committee reported with amendment H. R. 6775, to amend the Shipping Act of 1916 so as to provide for the operation of steamship conferences (S. Rept. 860). p. 16655
5. CIVIL DEFENSE. The Armed Services Committee reported without amendment H. R. 8383, to amend the Federal Civil Defense Act of 1950 to ratify retroactive financial contributions made to States for civil defense purposes (S. Rept. 846), and H. R. 8406, to change the name of the Office of Civil and Defense Mobilization to the Office of Emergency Planning (S. Rept. 847). p. 16538
6. FARM LABOR. Sen. Williams, N. J., inserted and commended articles favoring Federal aid to provide improved educational facilities and health services for migratory farm workers and their families. pp. 16544-6
7. LEGISLATIVE PROGRAM. Sen. Mansfield announced that the calendar will be called today, Sept. 1. pp. 16651-2

HOUSE

8. WHEAT. The Subcommittee on Wheat of the Agriculture Committee voted to report to the full committee H. R. 8842, to amend the Agricultural Act of 1961 so as to permit a wheat producer to withdraw from his stored excess the amount of wheat by which he fails to make his normal production on the reduced acreage allotment, less the acres voluntarily retired below the allotment. p. D794
9. APPROPRIATIONS. Conferees were appointed on H. R. 7371, the State-Justice appropriation bill for 1962. Senate conferees have already been appointed. p. 16659
The Appropriations Committee was granted until midnight Fri., to file a report on the foreign aid appropriation bill for 1962. p. 16659
10. EDUCATIONAL EXCHANGES. The Foreign Affairs Committee reported with amendments H. R. 8666, to provide for the improvement and strengthening of the international relations of the United States by promoting better mutual understanding among the peoples of the world through educational and cultural exchanges (H. Rept. 1094). p. 16750
11. ATOMIC ENERGY. Received the conference report on H. R. 7576, the atomic energy authorization bill (H. Rept. 1101). (pp. 16728-32) This bill includes authorizations for reactor development, biology and medicine, and the cooperative power reactor demonstration program.
12. PURCHASING. The Subcommittee No. 2 of the Judiciary Committee voted to report to the full committee H. R. 8741, to authorize any Federal agency to waive performance and payment bonds. p. D795
13. TRANSPORTATION. The Interstate and Foreign Commerce Committee reported with amendments S. 320, to amend the Interstate Commerce Act so as to permit State commissions to grant the right to motor common carriers operating within a single State to engage in interstate or foreign operations within the boundaries of the State in which intrastate authority is being simultaneously authorized, and to authorize ICC to issue certificates of registration to existing carriers engaged in interstate operations under part II of the Act (H. Rept. 1090). p. 16750
The Merchant Marine and Fisheries Committee reported with amendments H. R. 2488, to amend the Shipping Act of 1916 so as to provide for licensing independent ocean freight forwarders (H. Rept. 1096). p. 16750

STEAMSHIP CONFERENCES AND DUAL RATE
CONTRACTS

AUGUST 31, 1961.—Ordered to be printed

Mr. ENGLE, from the Committee on Commerce, submitted the following

R E P O R T

[To accompany H.R. 6775]

The Committee on Commerce, to whom was referred the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

PURPOSE OF THE BILL

The primary purpose of this amended bill is to authorize ocean common carriers and conferences thereof serving the foreign commerce of the United States to enter into effective and fair dual rate contracts with shippers.

GENERAL STATEMENT

After 3 years of extensive studies, the House Merchant Marine and Fisheries Committee on May 4, 1961, reported out H.R. 6775, with amendments. It passed the House on the consent calendar June 12, 1961.

In two respects that bill as it passed the House constitutes a landmark of sensible international shipping regulatory legislation. First, it accords great weight to the rights and needs of American shippers. Second, it forthrightly rejects the domestic antitrust argument that fair and effective exclusive patronage contracts between shippers and steamship conferences should not be legalized.

Thoughtful comparison of purposes of the House bill with those of your committee's amendments will reveal an immense number of similarities and a few important differences. Both measures spring

from an appreciation of the hard fact of international shipping life, that, in the words of the House report (H. Rept. 498 on H.R. 6775, 87th Cong., 1st sess., p. 12):

* * * the only method that has proved practical to assure continuity of service on a particular route with a degree of stability of rates, in view of the very large investment required in the establishment of a regular service, is * * * [the] providing [of] specific inducements to shippers to utilize the services of the particular line or lines regularly serving that route.

* * * * *

In the course of the hearings before the committee *virtually all of the witnesses, both carrier and shipper, testified that they desired the continuance of the dual rate contract system* and that some such system was virtually a necessity for their continued successful operation. [Emphasis supplied.]

This preponderance of shipper support for the legalization of steamship conference dual-rate contracts takes on added significance from the fact that the House Merchant Marine and Fisheries Committee held hearings throughout the United States and took extensive testimony from almost 100 witnesses representing American importers and exporters.

The thoroughness and fairness with which the House committee considered the needs of shippers in their relations with steamship conferences, expedited greatly this committee's undertaking. Most of the shippers' protections incorporated in the House bill appear in your committee's amendments, a few have been broadened; a few new ones added; a few which were there have been deleted, and they are explained hereinafter.

In drafting its amendments, your committee followed the recommendations of the Department of Commerce, the Federal Maritime Board, and the Department of State.

In preparing the amendments your committee found support in the following statements appearing in the report of the House Merchant Marine and Fisheries Committee (H. Rept. 498 on H.R. 6775, 87th Cong., 1st sess., pp. 12-13):

The Department of Justice testimony on the legislation was generally unfavorable. While its position is consistent with the antitrust policy of the United States, it fails to take into account the peculiar nature of the particular business involved * * *.

* * * * *

The hearings of the committee have made it quite clear that our traditional antitrust concepts cannot be fully applied to this aspect of international commerce. Your committee has concluded that any attempt to effect regulation of this commerce in a measure comparable to that applied to our domestic commerce would be highly detrimental to our essential American-flag merchant marine.

Your committee has given considerable weight to the following fact:

The only nonconference lines today which desire to operate regularly on a basis of cutting conference rates are foreign flag lines.

This, together with other important considerations, impelled us to reject three provisions of the House bill, each apparently designed to encourage nonconference foreign flag lines, eligible but unwilling to join approved and regulated conferences to stay out of the conferences, to cut conference rates and thereby to obtain a disproportionately large share of the available cargo. In this connection, we recall with some concern the following finding of the Supreme Court in *Federal Maritime Board v. Isbrandtsen Co.* (356 U.S. 481 (1958) at p. 485):

The practice of undercutting conference rates during the years 1950, 1951, and 1952, captured for Isbrandtsen 30 percent of the total cargo in the trade although Isbrandtsen provided only 11 percent of the sailings.

All of our subsidized lines, and, indeed, all American-flag ocean common carriers (including Isbrandtsen, which has recently announced its intention to become a conference line), are, or soon will be conference operators. Therefore, any provision designed to encourage foreign flag lines to stay out of Board-approved conferences and cut conference rates would be seriously inimical to our American merchant marine and, in the absence of some compelling showing to the contrary, clearly adverse to the public interest.

Your committee has been constantly aware of the fact that further unilateral attempts by this Government to regulate the details of commercial transactions of shippers and carriers which take place and are documented abroad, are likely to have two major deleterious effects and negligible counterbalancing benefits. First, they are likely to create further resentment among our foreign friends and, as a consequence, to cause reactions ranging from passive loss of confidence to active retaliation in foreign ports. In the process, they might well force foreign lines out of conferences, thereby destroying conferences and placing the high-cost American operator, even if subsidized, at a serious if not impossible competitive disadvantage. Second, and perhaps equally serious, to the extent such extraterritorial regulation cannot be as effectively enforced against foreign flag lines as against their competitors, our American lines, we would be working at serious cross-purposes with fundamental precepts of national maritime policy.

In this connection, note that on August 3, 1961, the Department of State informed this committee that five important maritime nations—Belgium, Italy, Japan, the Netherlands, and the United Kingdom—have notified it that they will not permit their nationals to comply with requests for production of documents located outside the United States. Denmark, Finland, Federal Republic of Germany, Norway and Sweden, through the State Department, have also made it plain that they reserve the right to restrict document production.

And so, at the outset of the complex question of whether, and if so under what limitations, Congress should allow commission-approved conferences to enter into approved dual rate contracts, your committee recognized that there were serious jurisdictional limits upon this Government's power to police the details of any scheme of regulation broadly extraterritorial in scope. Accordingly, we have sought to increase and strengthen safeguards of the public interest which may be effectively and equally enforced by the Federal Maritime Commission. But we refuse to impose upon the Commission certain new

extraterritorial regulatory responsibilities which it could easily enforce against American-flag lines but not against their foreign-flag competitors.

BACKGROUND OF THE BILL

Steamship conferences defined

Steamship conferences are groups or voluntary associations of ocean common carriers formed so that the members may agree upon rates and certain other competitive practices. Obviously, they do so for the purpose of reducing the rigors of competition which otherwise would exist among the member lines.

The history of ocean shipping proves beyond peradventure that these competitive rigors are so potentially violent that when unleashed almost invariably they destroy the requisite dependability, regularity and nondiscriminatory nature of ocean common carriage.

For many years all of the maritime nations of the world, including the United States, have realized that the inevitable monopolistic and discriminatory nature of rate-war competition among the ocean common carriers serving their foreign commerce, justified the formation of conferences so that the carriers may limit or regulate competition between or among themselves. Only the United States imposed over the conference regulatory device a detailed system of Government regulation under the Shipping Act, 1916.

Generally speaking, members of a conference serve a trade in one direction, inbound or outbound. For example, the North Atlantic-French Atlantic Conference is made up of common carriers of many nations, all carrying ocean freight from North Atlantic ports of the United States to French Atlantic ports.

As common carriers, conference lines hold themselves out to serve the public in a nondiscriminatory manner and on a regularly scheduled, previously announced basis. Generally speaking, they do this regardless of cargo offerings at any particular time. In their scheduled service function, conference lines differ markedly from contract carriers or, as they are often called, tramps. Since tramps do not hold themselves out as common carriers, they may seek profitable contracts of carriage whenever and wherever they exist.

Packaged material, or general cargo, as distinguished from bulk cargo, make up the chief cargo of conference vessels. Whereas bulk cargoes such as coal, ore, and fertilizer are often carried by a contract carrier in full shipload lots for a shipper who hires the vessel for a single trip, conference liner cargoes range from bobbypins to electric generators and are carried for hundreds of shippers, many of whom ship regularly in the trade but seldom, if ever, in shipload lots.

The needs of the businessmen who import and export general cargo are worlds apart from the needs of those who import and export bulk cargo. And it is these needs of the importer and exporter of general cargo which have caused the men who build, own, and operate ocean common carriers to do so with an eye to serving the special needs of the particular trade, regularly, in good times and bad, for long periods of time. A number of lines have served their particular trades for a half century or more.

Understandably then, to men such as these, reasonable stability of rates and reasonable assurance of cargo offerings are of vital importance. Fortunately, a counterbalancing desire for stability generally

exists among those importers and exporters in the trade who are more than intermittent shippers or consignees. To them it is equally important to have regular, dependable ocean common carriage and predictable, relatively stable rates. It is especially important to them that they be confident that their competitors are not paying a lower rate or getting unduly preferential treatment.

Economic factors of ocean shipping which justify steamship conferences

Six economic factors in ocean common carriage are most often cited in justification of the steamship conference system.

First, is the "ease of market entry".—Freedom of the seas permits any ship to enter any trade at any time, subject only to minimal limitations imposed by certain nations as safety requirements or military precautions. In ocean shipping no certificate of convenience and necessity need be obtained. The mobility and interchangeability of dry-cargo vessels is of great competitive significance. A tramp carrying bulk grain today, may be on the liner berth the next day carrying many types of packaged cargo. Whereas it costs a great deal to set up and operate a regularly scheduled liner service, in comparison it costs very little to charter a vessel, advertise in the port's trade paper, hire a broker or agent on a commission basis and, when business is good, operate a regular service.

Second, is the industry's rigid fixed and operating cost structure.—Whether a liner vessel sails full and down or three-quarters empty, it costs about the same to make the scheduled voyage. Fuel, maintenance of the vessel, depreciation, officers' and crews' wages and subsistence, fresh water and insurance—these costs and others are affected only slightly by the amount of cargo carried. And so it is, when a trade becomes overtonnaged, that the normal independent self-interest of each carrier in the trade is to get more cargo, by cutting rates, if necessary, to the point where they return at least the cost of handling (i.e., the cost of loading and discharging the cargo.)

Third, is the absence of any governmental control over the level of ocean freight rates.—Whereas Congress has vested rate control powers and responsibilities in Government regulatory agencies concerned with domestic surface and air transportation, it has heretofore given to the maritime regulatory agencies no similar mandate over international shipping rates. Thus, in ocean shipping there is no floor to rates, which a distressed carrier, or one which must make the voyage for other considerations that immediate profit, may charge.

Fourth, is the difference in operating costs of similar vessels flying different flags.—No extended discussion is needed of the fact that the operating and capital costs of American-flag ocean common carriers are considerably higher than those of any other nation. Since most carriers cannot operate as cheaply as some competitor which possesses national cost advantages, the conference affords a device whereby all carriers working as a group, set rates at a point where such an advantage is not absolutely controlling.

Fifth, is the almost invariable imbalance between inbound and outbound cargo.—On Trade Route 21 (from gulf ports of the United States to the United Kingdom and Continent range), for example, in 1956, 2.83 million long tons of commercial dry cargo moved outbound and only 0.71 million long tons inbound. This 4-to-1 ratio caused serious overtonnaging of the inbound trade. In such a situation,

when returning to the market from which the large shipments are moving, carriers are subjected to enormous economic pressure to cut rates, if necessary, to the bone in order to attract as much inbound cargo as possible, and to do it without wasting precious time.

Sixth, is overtonnaging.—This final factor is a general one touched on above. It stems from the fact that the peacetime supply of ocean tonnage is, as at present, often much greater than the needs of shippers. With the postwar rebuilding of most foreign flag merchant fleets, serious overtonnaging throughout the world tends to be the rule, not the exception for the indefinite future.

CONFERENCE HISTORY

The first formally organized steamship conference was established in 1875 to serve the trade from United Kingdom ports to Calcutta. The Calcutta Conference agreement provided that the same rates would be charged all shippers, and that no preferential treatment would be given any shipper. Some large shippers, who apparently until that time had been enjoying preferential rates in the trade, did not favor formation of a conference possessing a fetish for equal treatment of shippers. By contracting with vessels competing with the conference lines, these large shippers showed their displeasure with the conference. When the conference attempted to meet this competition by negotiating exclusive patronage contracts with shippers, the larger ones refused to bind themselves unless they received preferential treatment. But the conference declined to do this; and instead, in 1877, put into effect a deferred rebate system which apparently stabilized the trade.

The deferred rebate system provided a rebate to all shippers who shipped exclusively by members of the conference. However, payment of the rebate was deferred beyond the period for which computed and the shipper was entitled to receive the rebate only if, during the period for which computed and the period of deferment, he has shipped exclusively via the conference. As will be mentioned hereinafter, this strongest of shipper-conference tying devices is expressly outlawed by the Shipping Act, 1916.

Because of the restrictive nature of the deferred rebate system used by the Calcutta Conference and other conferences, the King of England in 1906 ordered a Royal Commission investigation of conferences to determine whether their operations had caused injury to British or Colonial trade and, if so, what remedial action should be taken. In 1909, the Royal Commission reported:

The advantages conferred by shipping conferences are substantially dependent upon the system of deferred rebates or some system equally effective as a "tie" upon the shippers and equally uniform in its application.

In reaching this conclusion, the Royal Commission rejected the recommendation that deferred rebates be outlawed or controlled by legislation. In the process, the Commission found that shipowners need the protection of conferences and deferred rebates, and that many shippers regard conference's use of such tying devices as prerequisite to a regular, dependable liner service.

In thus rejecting the proposal that the deferred rebate system be outlawed or modified legislatively, the Royal Commission recom-

mended that if abuses developed they be counterbalanced by the formation of shipper groups empowered to negotiate rates with the conference.

House Resolution 587, 62d Congress, 2d session, introduced on January 18, 1912, by the then chairman of the House Merchant Marine and Fisheries Committee, Congressman J. W. Alexander, shows that the United States, too, when the Sherman Act was young, was deeply concerned about the activities of steamship conferences serving U.S. ports. The Alexander committee had before it the above-mentioned report of the Royal Commission. It also considered testimony and exhibits furnished by the Department of Justice in cases against certain ocean common carriers for alleged violation of the Sherman Act (*United States v. Prince Line, Ltd.*, 220 F. 230; and *United States v. Hamburg-American Line*, 216 F. 971).

In its report, submitted after 2 years of intensive investigation, the Alexander committee outlined three methods which conferences use to meet outside competition (4 Alexander Rept. 287-293). The first was the deferred rebate system; the second, fighting ships; the third, the contract system. Of these three, only the first two were outlawed expressly when Congress, 2 years later, enacted the Shipping Act (see sec. 14, First and Second, 46 U.S.C. 812). Until the decision of the Supreme Court in *Federal Maritime Board v. Isbrandtsen Co.* (354 U.S. 481 (1958)), many authorities believed that it was only the deferred rebate system and fighting ships which the Shipping Act, 1916, outlawed.

In discussing the advantages of conferences, the Alexander committee emphasized the following (4 Alexander Committee Rept. 295-303):

- (a) Increased sailings.
- (b) Fixed, dependable, and regular dates of sailings.
- (c) Long-range stability of freight rates, allowing American exporters to make contracts for future performance in competition with foreign merchants.
- (d) Uniform freight rates, regardless of size or economic power of any shipper.
- (e) New, weaker steamship lines were protected from competitive destruction by older, stronger lines.
- (f) Maintenance of proper relationship between freight rates from various sources of supply to common foreign markets.

The Alexander committee outlined, too, the disadvantages of conferences (4 Alexander Committee Rept. 304-307). The committee concluded, however, that corrective legislation which would bring conferences under effective U.S. Government supervision and control would suffice.

After summarizing the advantages resulting from conference action, the Alexander committee found (4 Alexander Committee Rept. 416-417):

It is the view of the committee that open competition cannot be assured for any length of time by ordering existing agreements terminated. The entire history of steamship agreements shows that in ocean commerce there is no happy medium between war and peace when several lines engage in the same trade. Most of the numerous agreements and

conference arrangements discussed in the foregoing report were the outcome of rate wars, and represent a truce between the contending lines. To terminate existing agreements would necessarily bring about one of two results: the lines would either engage in rate wars which would mean the elimination of the weak and the survival of the strong or, to avoid a costly struggle, they would consolidate through common ownership. Neither result can be prevented by legislation and either would mean a monopoly fully as effective, and it is believed more so, than can exist by virtue of an agreement.

Two years after the Alexander committee's report, Congress enacted the Shipping Act, 1916 (46 U.S.C. 801 et seq., 39 Stat. 728).

To our knowledge, Japan is the only other nation which has legislatively prohibited steamship conferences from using fighting ships or the deferred rebate system. Japan's marine transportation law, enacted June 1, 1949, was patterned after the Shipping Act, 1916, and, in article 28, expressly prohibited the use of the deferred rebate system, fighting ships, and retaliation against a shipper by way of unfairly or unjustly refusing to transport his cargoes because he had patronized a nonconference carrier. Upon recommendation of the Japanese Ministry of Transportation, the Diet has repealed these prohibitions from the Marine Transportation Act.

ISBRANDTSEN LITIGATION

From 1948 to 1958, Isbrandtsen Co., joined by the Departments of Justice and Agriculture argued against the dual-rate contract position of various conference lines and the Board. While it attacked such contracts on a number of grounds, its chief contention was that the use of such contracts was both retaliatory and discriminatory within the meaning of section 14, Shipping Act, 1916.

In *Isbrandtsen Co. v. United States* (81 F. Supp. 544 (S.D.N.Y.), Appeal decreased per curiam sub nom. *A/SJ. Ludwig Mowinckels Rederi v. Isbrandtsen Co.*, 336 U.S. 941 (1949)), the district court enjoined the Board from approving a dual-rate system until Isbrandtsen had an opportunity to protest the system in an adversary proceeding before the Board.

In *Isbrandtsen Co. v. United States* (96 F. Supp. 883 (S.D.N.Y. 1951), aff'd per curiam by an equally divided court sub. nom. *A/SJ. Ludwig Mowinckels Rederi v. Isbrandtsen Co.*, 342 U.S. 950 (1952)), the district court held that the Board could not approve the conference agreement to use a dual-rate system since the Board had not determined that the spread between the contract and non-contract rate was reasonable. Thereafter the Board issued its General Order 76 requiring a conference intending to use a dual-rate contract to justify both the use of the dual-rate system and the amount of the spread. The Japan-Atlantic and Gulf Freight Conference, acting under this general order, filed with the Board a copy of the conference agreement to institute dual-rate contracts. Isbrandtsen and the Department of Justice intervened. The Board permitted the agreement to go into effect before holding a hearing. The intervenors objected. In *Isbrandtsen Co. v. United States* (211 F. 2d 51

(D.C. Cir.), cert. denied, 347 U.S. 990 (1954)), the U.S. Court of Appeals for the District of Columbia Circuit held the Board's action improper on the grounds that before such an agreement may become effective under such circumstances the Board must hold a hearing and give its formal approval.

Thereafter, the Board held such a hearing and approved the proposed dual-rate system. *Japan-Atlantic and Gulf Freight Conference* (4 F.M.B. 706 (1955)). The court of appeals reversed on the ground that the system was illegal per se (*Isbrandtsen Co. v. United States*, 239 F. 2d 933 (D.C. Cir. 1956)).

The Supreme Court, in a 6-to-3 decision affirmed (*Federal Maritime Board v. Isbrandtsen Co.*, 354 U.S. 481 (1958)). It did so not on the ground that the agreement was illegal per se but rather because the Board had found that the proposed dual-rate contract was "a necessary competitive measure to offset the effect of nonconference competition," and, therefore, it violated section 14 Third which outlawed conference practices having the effect of "stifling the competition of independent carriers." More specifically, the Supreme Court considered the proposed contract as a "resort to other discriminating or unfair methods" prohibited by section 14 Third.

CONGRESSIONAL ACTION

The Supreme Court, in deciding *Isbrandtsen*, thus cast substantial doubt on the legality of the thousands of dual-rate contracts then being used by more than half the 113 inbound and outbound conferences serving U.S. ports. For many years most of these dual-rate conferences and the shippers they served, had been parties to dual-rate contracts, at least tacitly approved by the Board. Therefore, the situation was ripe for moratorium legislation.

Congress promptly decided that until it could carefully study conferences and their need to use such contracts, it must insulate them from the effects of that decision. There was little alternative; sudden disruption of international shipping's primary way of doing business to and from the United States being the only real choice.

On August 12, 1958, Public Law 85-626 (72 Stat. 574) was enacted. It amended the last paragraph of section 14, Shipping Act, 1916, to provide that nothing in that act made unlawful any dual-rate contract arrangement in effect at the time of the Supreme Court's decision (May 19, 1958), unless and until disapproved, canceled, or modified by the Board in accordance with the terms of section 15 of the act. The term "dual-rate contract arrangement" was defined to mean a practice whereby a conference establishes rates at two levels, the lower of which is charged to merchants who agree to ship cargoes on vessels of members of the conference only, the higher being charged to merchants who do not so agree.

This first interim dual-rate law (Public Law 85-626, 72 Stat. 574) contained an automatic expiration date of June 30, 1960. Promptly after enactment two subcommittees of the House—the Special Subcommittee on Steamship Conferences of the Merchant Marine and Fisheries Committee and the Antitrust Subcommittee of the Judiciary Committee—commenced detailed studies of steamship conferences. Those studies will be discussed briefly hereinafter. Because they

were not completed before June 30, 1960, the second interim dual-rate law (Public Law 86-542, 74 Stat. 253), was enacted on June 29, 1960, and extended the moratorium until June 30, 1961.

The House passed H.R. 6775, with amendments, on June 12, 1961. Hearings by your committee's Merchant Marine and Fisheries Subcommittee held June 16, 1961, convinced us beyond any doubt that the bill, in the form passed by the House, was highly complex and controversial and that it needed very careful consideration and probably required a number of important amendments. June 27, 1961, we reported an original bill, S. 2154, to extend the interim dual-rate law until June 30, 1962. The House amended that bill to limit the extension until only September 15, 1961. Your committee and the Senate acceded to that amendment; and, on June 30, the bill was signed by the President (Public Law 87-75, 75 Stat. 195).

Beginning shortly after the enactment of the first interim dual-rate law, the House Antitrust Subcommittee launched an intensive investigation of steamship conferences. Its first hearings were held on October 13, 1959; its last announced hearings closed March 16, 1961. As yet, its report has not been published; however, certain aspects of this landmark study are very well known to your committee and were carefully taken into account by the House Merchant Marine and Fisheries Committee. Indeed, in opening the hearings on H.R. 4299, the predecessor to H.R. 6775, Chairman Bonner said (hearings before the Special Subcommittee on Steamship Conferences, House Merchant Marine and Fisheries Committee, 87th Cong., 1st sess., on H.R. 4299 (Mar. 20, 1961), p. 20):

The bill was drawn by the committee staff with the most able assistance of the staff of the Judiciary Committee.

Chairman Celler presented a comprehensive statement, with attachments, to the Merchant Marine and Fisheries Subcommittee of your committee concerning the studies of his subcommittee, as well as his views on H.R. 6775. That statement has been made a part of our hearing record of June 16, 1961, and has been carefully considered by this committee.

The studies of the Special Subcommittee on Steamship Conferences of the House Merchant Marine and Fisheries Committee also began in late 1958. The first hearings were held on February 25, 1959; the last, on March 28, 1961. They culminated in House Report 498, published on June 8, 1961, and in H.R. 6775. That report has also been carefully reviewed by and was of great help to your committee.

SUMMARY OF COMMITTEE'S POSITION

Before unanimously reporting the amended bill, your committee found that:

1. *Conferences need the right to use dual-rate contracts.*—In order for the ocean common carriers and conferences serving our foreign commerce to do so on a regular, dependable, and nondiscriminatory basis, they must be allowed, as they are throughout the rest of the maritime world, to enter into dual-rate contracts with shippers and consignees. Otherwise, the economics of ocean shipping will force the lines concerned into rate wars among themselves that might result in the destruction of ocean common carriage. If that happens, there can be no doubt that the high cost American lines will be the hardest hit.

2. *Primary parties in interest strongly favor legalization of dual-rate contracts.*—The great majority of American importers and exporters who use ocean common carriers, all American-flag ocean common carriers, all foreign-flag conference lines, all interested foreign governments, and our own Departments of State and Commerce favor legalization of dual-rate contracts. This is in accord with the House report on this bill, and with our own independent determination from extensive hearings and consultations with representatives of the interested parties listed above.

3. *The amended bill contains ample safeguards of the public interest.*—Under your committee's amendments a conference could not institute a dual-rate contract until it had been approved by the Federal Maritime Commission. The Commission could not approve if it found the contract—

(a) detrimental to the commerce of the United States; or

(b) contrary to the public interest; or

(c) unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors.

In addition, no contract could be approved unless it expressly—

(a) Permitted prompt release of the contract shipper with respect to any shipment for which the contract carrier or conference could not provide the space he needs on reasonable notice,

(b) provided that rates shall not be increased for a reasonable period, in no case less than 90 days except in case of war or other force majeure,

(c) covered only those goods of the contract shipper as to which he has the legal right at the time of shipment to select the carrier,

(d) limited liquidated damages to what would be due at the contract rate on the particular shipment, less cost of handling,

(e) permitted the shipper to terminate on 90 days' notice,

(f) provided for a reasonable spread between contract and noncontract rates, in no event more than 15 percent of the noncontract rate,

(g) excluded from the coverage of the contract, cargo loaded in bulk without mark or count, and

(h) contained other appropriate provisions required by the Commission.

With all these protective restraints written into the statute, shippers' interests would, we feel, be protected to the maximum extent possible.

AMENDMENTS

Your committee struck all after the enacting clause and substituted its own version of the legislation.

SECTION-BY-SECTION EXPLANATION OF THE COMMITTEE AMENDMENT

Section 1

This section would amend section 14 Third, Shipping Act, 1916, to insert the word "unjustly" before the word "discriminating". This will conform that section to all other portions of the Shipping Act, 1916, where not all "discriminatory" conduct is forbidden but only that which is "unjust."

The addition of the word "unjustly" will make it clear that a dual rate contract which meets the "unjustly discriminatory" and other standards of section 14b, Shipping Act, 1916, as amended by this bill, and which the Commission permits to be used, may not be challenged under section 14 Third. That was the section relied upon by the majority of Supreme Court in *Federal Maritime Board v. Isbrandtsen Co.* (354 U.S. 481 (1958)).

This amendment was recommended by the Departments of Commerce and State, and is favored by all American ocean common carriers and all foreign-flag conference lines.

Section 2

This section would amend the Shipping Act, 1916, by adding a new section that would require the Federal Maritime Commission, notwithstanding any other provision of the Shipping Act, on application and after notice, to permit any common carrier by water in foreign commerce, or conference of such carriers, to enter into certain types of dual rate contracts with shippers or consignees.

First, this section would require that such contracts, if offered to any shippers and any consignees, must be available to all shippers and all consignees on equal terms and conditions.

Second, such contracts must provide that the rate which will be charged the shipper or consignee who thereby contracts to give all or any fixed portion of his patronage to such carrier or conference will be lower than the rate charged the shipper or consignee who does not so contract.

And third, the section would forbid the Commission to permit the use of any dual rate contract if the Commission found that it would be—

- (a) detrimental to the commerce of the United States, or
- (b) contrary to the public interest, or
- (c) unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors.

Your committee added "(c)", above, so that it could not be argued that lawful dual rate contracts could be unjustly discriminatory as between ports, for example.

In addition, each contract must expressly provide the following:

1. Expressly provide for prompt release from the contract of the contract shipper as to any shipment for which the contracting carrier or conference cannot provide as much space as the shipper requires on reasonable notice.

The bill as it passed the House provided that the contract must expressly assure the contract shipper—

as much of the available space on the vessels of the carrier or conference of carriers as is necessary, on reasonable notice, to meet the normal demands of the contract shipper.

The Department of Justice objected vigorously to that provision on the ground that it might be construed to give contract shippers a greater right to cargo space accommodations than noncontract shippers. A large shipper group, the National Industrial Traffic League, requested deletion of the House-passed "assurance-of-available-space" provision and the substitution of "prompt-release" provision now found in section 2.

2. Each dual rate contract must provide that when the rate under the contract becomes effective, it shall not be increased before a reasonable period, in no case less than 90 days except in case of war or other force majeure.

3. Provide expressly that it covers only those goods of the contract shipper as to the shipment of which he has the legal right at the time of shipment to select the carrier; provided, however, that it shall be deemed a breach of the contract if, before the time of shipment and with the intent to avoid his obligation under the contract, the contract shipper divests himself of the legal right to select the carrier and the shipment is carried by a carrier which is not a party to the contract.

This provision down to the "provided, however," clause, is identical with the provision in the House bill. But the House report (H. Rept. No. 498, 87th Cong., 1st sess., on H.R. 6775, p. 9) said:

Fundamentally, what the committee sought was a provision that specified the good faith of the parties—neither too rigid nor susceptible of manipulation. The committee feels that if a contract shipper is in a legal position to control the routing, good faith requires him to do so.

Accordingly your committee added the "provided, however" clause, to write into the legislation the good faith requirement mentioned in the House report. Spokesmen for the National Industrial Traffic League have notified this committee that the "provided, however" clause is satisfactory to the NIT League. Certainly, it is in keeping with the testimony of Mr. Grant Arnold, chairman, Special Committee on the Study of the Shipping Act, 1916, before your committee on June 16, 1961. In answer to the question of whether if the contract shipper actually has the choice and does choose the carrier, he should be bound to choose the contract carrier, Mr. Arnold said:

There is no question about it. He not only should, he must, and he should be penalized if he did not do it.

4. Limit damages to actual damages, but may specify that in the case of a breach by a shipper, the damages may be an amount not exceeding the freight charges computed at the contract rate on the particular shipment; less the cost of handling. The cost of handling is understood to mean the cost of loading the cargo onto the vessel and discharging the cargo from the vessel.

This provision is practically identical to a provision appearing in the House-passed bill. Your committee's amendment merely makes plain that liquidated damages should be what the contract carrier would have received in freight charges, less the cost of loading and discharging, if the shipper had not breached his contract.

Very few shippers have protested this liquidated damage provision, and to our knowledge none who favor legalization of dual rate contracts. While apparently it is quite satisfactory to the other interested Government agencies, the Department of Justice is still urging that it be limited to $1\frac{1}{2}$ times the difference between the amount of freight charges computed at the contract rate as compared with the amount of freight charges computed at the noncontract rate. There was no showing that this formula is as close or closer to actual damages in a time of overtonnaging than dead freight less the cost of handling.

What is desired by all shippers, carriers, and the regulatory agency is to have a simple, reasonable, and fair liquidated damage provision which at one and the same time will reasonably deter the shipper from breaching his contract and will be simple to compute if he does.

Most of the dual rate contracts now used by the conferences serving U.S. ports provide for liquidated damages in the amount of dead freight, without deducting anything for cost of handling. In addition, many of them provide that if a shipper who has breached does not promptly pay the liquidated damages due, or if he breaches twice in a year, his contract shall be canceled and he shall thereafter pay the noncontract rate. The bill would allow no such penalties.

5. Permit the contract shipper to terminate at any time without penalty upon 90 days' notice.

6. Provide for a spread between ordinary (or noncontract) rates and contract rates which the Commission finds to be reasonable; however, in no event shall the spread be more than 15 percent of the noncontract rates. Except for changing "Board" to "Commission", no change was made in this section by your committee. There was general satisfaction with the 15 percent spread, undoubtedly due in part to the following fact:

Of the 62 dual rate conferences serving U.S. ports in 1959, 21 expressed their spread between contract and noncontract rates in percentage figures (showing the percentage above the contract rate of the noncontract rate). Of the 21, 18 were using a 20 percent spread; 1, 15 percent; and 2, 10 percent. [See Hearings before Antitrust Subcommittee of Committee on the Judiciary, House of Representatives, on Monopoly Problems in Regulated Industries; Ocean Freight Industry, 86th Cong., 2d sess., pt. 1, vol. 1, at 740-741 (1959).]

The Justice Department urged your committee, as it unsuccessfully urged the House committee, to fix the maximum permissible spread at no more than 10 percent of the noncontract rates.

7. Exclude the contract shipper's cargo which is loaded in bulk without mark or count.

This is a new provision put in by your committee at the request of various shippers of chemicals and other bulk commodities who have found that some conferences exclude the shipper's bulk commodities from the coverage of the dual-rate contract while other conferences do not.

8. Contain such other provisions, not inconsistent herewith, which the Commission requires or permits. This provision should be read in conjunction with section 7 of the amended bill which would add a new section 43 to the Shipping Act, 1916, which would direct the Commission to make such rules and regulations as may be necessary to carry out the provisions of the Shipping Act.

This broad rulemaking mandate should move the Commission, for example, to deal with three matters which the National Industrial Traffic League has urged upon us and upon the House committee. While we would be strongly opposed to trying to freeze into legislation the solution to any of these three problems, they present matters which it seems to us the Commission is equipped to and should deal with under its rulemaking function.

One such matter involves another "coverage of the contract" question, somewhat like the f.o.b./f.a.s. problem. To what extent should dual rate contracts cover goods shipped by a company which is a subsidiary, affiliate or associate of the contract shipper? Obviously, no simple answer which would include or exclude all shipments made by all such related companies could suffice. The "good faith of the contract shipper" issue is present in large proportions. If the answer were left entirely to contract shippers, it is quite conceivable that some would have subsidiaries for the express purpose of using the conference carrier only when it suited them. But if it were left entirely to the contract carrier or conference, it might well be that no matter how legitimate and autonomous the subsidiary, affiliate or associate company, the claim of "all-or-nothing" might be made against the contract shipper.

A second matter which the Commission should resolve by rule or regulation involves the extent to which, if at all, dual rate contracts should exclude full cargoes which move in shippers' private or chartered vessels. Obviously, unless this question is carefully considered, it is quite possible that one of two things might result: First, large shippers would be able to gain substantial competitive advantage over their smaller competitors; or, second, contract shippers could not make fair and legitimate use under certain circumstances of their own or chartered vessels.

And, a third matter which, it seems to us, should be handled by Commission rule or regulation, is one which is not limited to the question of dual rate contracts but rather to Commission approval of section 15 agreements. For some time shippers and shipper groups have been urging Congress to amend section 15 so that no conference agreement could be approved which on rate matters required more than a majority vote of the voting carriers. Because of the widely varying needs and membership of the many conferences serving ports of the United States, and because of the detailed studies which should be made by conference/shipper experts before any such decision were reached we think it would be most unwise to legislatively mandate an answer. However, we have noted from the tabulation of voting requirements of the various conferences the following facts which should, we think, lead the Commission in due course to undertake an investigation or rulemaking proceeding for the purpose of determining whether the present situation meets the standards laid down by section 15, Shipping Act, 1916, as amended by this legislation.

The following is a reasonably accurate summary of the rate-matter voting requirements of the 113 conferences serving U.S. ports, 1958:

Unanimous.....	40	Two-thirds.....	36
Unanimous but 1.....	3	Majority.....	17
Three-quarters.....	17		

[Hearings before the Antitrust Subcommittee of the House Judiciary Committee, 86th Cong., 1st sess., on "Monopoly Problems in the Ocean Freight Industry," pt. 1, vol. 1, pp. 690-691.]

The remainder of section 2 would require the Commission to withdraw its permission for the use of any such contract if it finds that the contract is detrimental to commerce, contrary to the public interest, or justly discriminatory or unfair.

Carriers or conferences using approved dual rate contracts may, on 90 days' notice, terminate them without penalty, in whole or as to

any commodity; but the carrier or conference may not reinstitute the contract or part so terminated without Commission permission. Certain port authorities feared that the original bill might allow a conference to discriminate unjustly between or among ports by furnishing dual rate contract service to certain ports but not to competitor ports. Under your committee's amendment no carrier or conference would be permitted to discriminate unjustly as between or among ports by using or not using dual rate contracts, in whole or in part.

The term "contract shipper" is defined to mean any person, other than a carrier or conference, who is a party to a dual rate contract.

Section 3

The first paragraph of section 3 merely repeats the first paragraph of section 15, Shipping Act, 1916, as amended, but changes "Board" to "Commission."

The second paragraph of section 15, Shipping Act, 1916, as it would be amended by this legislation, would direct the Commission to disapprove any agreement, whether or not previously approved, which it finds unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to violate the act, and to approve all other agreements.

No agreement could be approved between conferences of carriers serving different trades which are naturally competitive, unless each conference retains the right of independent action. The House report said of a generally similar provision that it was "not meant to require the right of independent action on the part of the individual carriers *within a single conference*" (emphasis supplied) [H. Rept. 498, 87th Cong., 1st sess., on H.R. 6775 (June 8, 1961), p. 10]. To make this certain, your committee deleted from the bill the reference to agreements between "carriers."

The Department of Justice objects to this "joint agreement" provision in the bill. The Department contends that agreements between or among conferences should be made unlawful per se even though each conference retains the right of independent action. Your committee certainly cannot subscribe to such a blanket indictment of long-established, Board-approved policy, founded apparently on the same sound economic base which underlies the conference system itself.

As of October 1959 there were nine interconference agreements, approved by the Board and its predecessors. Five applied in certain European areas where cargo can move through a number of competitive gateways, either direct or with transshipment. Two applied in the Orient-U.S. North Atlantic trade and were designed to protect direct rates as against rate cutting by intermediate conferences which might carry transshipment cargo in the trade. Of the other two, one was between New York Freight Bureau and the Trans-Pacific Freight Conference of Japan; the other, between the Pacific Coast European Conference and the Hawaiian Islands/European Conference.

Your committee noted with approval the following comments of the former Chairman of the Federal Maritime Board, Hon. Clarence G. Morse:

These interconference agreements are designed as a means of stabilizing rates in the respective trades, of protecting the

competitive positions of the respective conferences, and of preventing interconference rate wars which deprive shippers and carriers alike of the stability and uniformity as to rates which the conferences seek to achieve. [Hearings before the Antitrust Subcommittee, House Judiciary Committee, 87th Cong., 1st sess., on "Monopoly Problems in Ocean Freight Industry," pt. 1, vol. 1 (Oct. 13, 1959), p. 157.]

The Commission is now reviewing the Board-approved joint agreement between the Far East Conference (from U.S. Atlantic and gulf ports) and the Pacific Westbound Conferences (from U.S. Pacific ports) to China, Japan, and the Philippines. Under that joint agreement (FMB No. 8200) the two conferences agree upon the overland rates to be charged by the Pacific Westbound Conference and the rates from both Atlantic/Gulf and Pacific areas for commodities which are common to both areas. Under the Far East Conference/Pacific Westbound Conference joint agreement each conference retains the right of independent action. Therefore, under our amendment it is left to the Commission to determine, under the standards set forth in the legislation amended, whether to continue its approval of that and other joint agreements, and when and under what circumstances to approve new joint agreements.

Your committee deleted from the bill a provision which would prohibit approval of any agreement that would permit shippers who act as carrier agents to represent such carriers in conference activities, unless the Commission found that no other qualified person was available. Every American and foreign-flag ocean common carrier witness who presented testimony to your committee urged deletion of this provision. Apparently it is not favored by any substantial shipper interests. In many foreign ports the effect of such a provision would be most disruptive of long-standing, unobjectionable business practice. Again, we believe that the act, as it would be amended by this bill, would afford the Commission all of the authority it needs to prevent whatever proscribed practices this provision of the bill was designed to reach.

Approval of any conference agreement which fails to provide reasonable and equal terms and conditions for admission to conference membership of all other qualified carriers in the trade, or which fails to provide that any conference member may withdraw from membership on reasonable notice without penalty, would be prohibited.

Your committee deleted from the bill a provision which would have amended section 15, Shipping Act, 1916, to require that all agreements approved under that section (1) designate an agent in the United States for the receipt of process effective against the signatories to the agreement; and (2) provide that every such signatory shall furnish the Commission "records or other information," wherever located in compliance with Commission orders. This provision was so vigorously opposed, and for good reasons, by practically all interested parties except the Federal Maritime Board, that we deleted it. We discuss its deletion in more detail later in this report.

We also deleted a provision which would have amended section 15 to require that no conference agreement could be approved unless the Commission found that the agreement contained "effective" provisions for policing the obligations under it. Your committee's amend-

ment would require the Commission to disapprove any conference agreement if it found, after notice and hearing, that as among the members there had been inadequate policing and enforcing of their obligations under the agreement.

The Commission must also disapprove any conference agreement, after notice and hearing, on a finding of failure to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints. Your committee has added the words "promptly and fairly hearing" for the purpose of insuring that conferences will establish and maintain fair and adequate procedures for affording shippers a reasonable opportunity to be heard in connection with their requests and complaints.

Agreements not approved by the Commission would be unlawful. Before approval or after disapproval it would be unlawful to carry out any agreement. However, approved conference tariff rates, including changes in dual rates which do not involve a change in the spread, if otherwise lawful, may take effect without prior approval by the Commission upon compliance with the tariff filing requirements of the Shipping Act, 1916, as amended.

Your committee deleted a provision that would require the Commission to disapprove any conference rate which was so unreasonably high or low as to be detrimental to the commerce of the United States. This deletion is discussed in detail later in this report.

The present provision of section 15, Shipping Act, 1916, exempting from the antitrust laws all agreements, modifications, or cancellations lawful under this section would be extended to exempt those lawful under section 2 of this bill. Whoever violated any provision of this section would be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action. Existing law provides a penalty of \$1,000 per day.

Section 4

All existing agreements lawful under the Shipping Act, 1916, immediately before enactment of this act, remain lawful unless disapproved by the Commission under the act as here amended. However, all existing agreements made unlawful by the act as here amended must be amended to comply with the new law. If such amendments are filed with the Commission for approval within 6 months after enactment of this act, those amended agreements shall remain lawful until disapproved. However, if such agreements are not so amended and if they are thereafter found to violate the amended act, they may be declared unlawful from the expiration of the 6-month period.

The bill as it passed the House contained no such stimulant for the purpose of impelling parties to existing section 15 agreements and dual rate contracts to bring them into compliance with the new law. It merely provided that all agreements lawful under the Shipping Act, 1916, immediately prior to enactment of this act would remain lawful for 1 year after enactment of this act unless disapproved sooner.

The Commission, of course, should accord a very high priority to reviewing promptly the existing agreements involved; however, your committee's amendment is not as rigid with respect to time as was the original bill.

Section 5

This section would require all ocean common carriers, and conferences thereof, to file with the Commission copies of their tariffs showing their rates, fares, and charges for transportation to and from ports of the United States and foreign ports. Certain details which must be shown in the tariffs are specified. But this section expressly does not apply to cargo loaded and carried in bulk without mark or court.

Copies of such tariffs must be made available to the public at a reasonable fee.

No increase in existing rates, fares, charges, etc., may be made except by filing with the Commission a new tariff effective not earlier than 30 days thereafter. The Commission, in its discretion and for good cause, may allow such increases in less than 30 days. Rate decreases, and new rates would become effective on filing with the Commission.

The rates, etc., on file with the Commission are the rates, etc., which must be charged.

At the request of the Comptroller General your committee added a provision that nothing in the act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal governments, or for charitable purposes. At the suggestion of other interested parties we also included a provision that appropriate authority for such reduced rates be set forth in a tariff on file with the Commission, and specifically mentioned as eligible for such reduced rates "religious organizations or religious personnel."

The Commission would be required to prescribe the form and manner in which tariffs shall be filed. A rejected tariff would be thereafter void and its use unlawful.

Anyone who violated this section would be liable to a penalty of not more than \$1,000 for every day the violation continued, to be recovered by the United States in a civil action.

Section 6

This section would amend section 20, Shipping Act, 1916, to allow conference lines and other persons subject to the act to give to the conference or anyone named by the conference, information for the purpose of (1) determining whether a shipper or consignee has breached his agreement with the conference or its members, or (2) determining whether a conference member has breached the conference agreement, or (3) compiling cargo statistics. It would also allow the soliciting or receipt by the conference, or anyone designated by the conference, of information for the same purposes.

To this provision we have added two clauses which should make it more acceptable to the Department of Justice. The Department pointed out that as passed by the House this provision would allow conference carriers to solicit and receive the specified information from freight forwarders, terminal operators, and other persons subject to the act but that such "other persons" would not be immunized from the proscription of those portions of section 20, Shipping Act, 1916, which are not amended by this act. Accordingly your committee added the phrase "or by any other person subject to this Act" to the pertinent portion of the section. In addition, we added a special protective provision that "the use of such information for any other purpose prohibited by this Act or any other Act shall be unlawful."

Section 7

A new section 43 would be added to the Shipping Act, 1916, to require the Commission to make such rules and regulations as may be necessary to carry out the provisions of the Shipping Act, 1916, as amended. This would broaden considerably the Commission's rule-making power as originally outlined in the bill. We have made this change at the urgent request of the Commission and despite the objections of certain carriers.

Section 8

This section would amend section 16 first, Shipping Act, 1916, by adding a proviso that within 30 days after enactment, or within 30 days after the filing with the Commission of any conference freight rate, rule, or regulation, any Governor may protest to the Commission that the rate, etc., unjustly discriminates against the State, Commonwealth, or possession. In that event, the Commission must order the conference to show cause why the rate should not be set aside, and within 120 days thereafter the Commission must determine whether the rate, etc., is unjustly discriminatory. If it finds that it is, the Commission must enter a final order setting aside the rate, etc.; if it finds that it is not, the Commission must enter a final order dismissing the protest.

Section 9

This section would amend the interim dual rate law to extend it until March 31, 1962.

Section 10

Although section 9 becomes effective immediately upon enactment, the remainder of the bill would become effective on and after April 1, 1962.

Title

Your committee amended the title of the bill to emphasize its basic purpose, that is to authorize ocean common carriers and conferences thereof to enter into fair and effective dual rate contracts with shippers.

MAJOR AMENDMENTS

As it passed the House, H.R. 6775 raised the following important questions which your committee has answered by its recommended amendments as discussed below:

1. *Is every effective dual rate contract used by a conference "intended," or "reasonably likely," or will "tend" to cause nonconference lines either to join Board-approved conferences or leave the trade?*

At the threshold of its consideration of the bill, your committee was confronted with this question. It was raised because in H.R. 6775, as it passed the House, were the following provisions:

(a) In section 1 the Board, before permitting the use of any dual rate contract, would be required to find that it "is not intended, and will not be reasonably likely, to cause the exclusion of any other carrier from the trade."

(b) Also in section 1, the Board would be required to withdraw permission which it had granted for the use of any dual rate contract if the Board found, after notice and hearing, that the contract tends to cause the elimination from, or prevent the entry into the trade of any carrier.

(c) In section 2 the Board was mandated not to approve, nor to continue to approve, under section 15, Shipping Act, 1916, any agreement "(3) whose probable effect will be reasonably likely to exclude any other carrier from the trade."

Your committee quickly learned from the House report and our hearings of June 16, 1961, that within the meaning of these phrases a nonconference line might be deemed "excluded" or "eliminated" from the trade or "prevented" from entering it, even though the line was eligible but unwilling to join the Board-approved conference on the same reasonable and equal terms and conditions as the other conference lines, and to participate with them in the conference dual rate contract.

Examination of the record in the House and before the Merchant Marine and Fisheries Subcommittee of your committee reveals overwhelmingly that every effective dual-rate contract used by a conference is intended, and reasonably likely, and tends to cause nonconference lines either to join the conference using the contract or to leave the trade for happy hunting elsewhere. The following statements by experts leave no doubt about this:

Former Board Chairman Hon. Clarence G. Morse in urging legalization of dual-rate contracts, said:

My personal philosophy is that the purpose and intent of a dual-rate contract is to garner all shipments of every character by the conference lines.

I personally feel and believe that the purpose and intent of a dual-rate system is to drive out nonconference competition (hearings before the Special Subcommittee on Steamship Conferences of the House Merchant Marine and Fisheries Committee, 86th Cong., 1st sess. pt. 1, p. 53 (Feb. 25, 1959)).

Robert Bicks, former First Assistant and Acting Assistant Attorney General, Antitrust Division, Department of Justice, during those same hearings, in opposing legalization of dual-rate contracts, said that the—

interested Government agencies do agree, as the Chairman of the Maritime Board put it, that "the purpose and intent of a dual-rate system is to drive out nonconference competition" (p. 163).

W. Wallace Kirkpatrick, former Acting Assistant Attorney General, Antitrust Division, Department of Justice, in March of this year opposed legalization of dual-rate contracts because, as he put it, they are "essentially coercive and discriminatory as to shippers and exclusionary as to nonconference carriers" (hearings before the Antitrust Subcommittee, House Judiciary Committee, 87th Cong., 1st sess., on "Monopoly Problems in the Ocean Freight Industry," transcript pp. 4079, 4082-4085 (Mar. 16, 1961)).

On the final day of hearings by the Special Subcommittee on Steamship Conferences of the House Merchant Marine and Fisheries Committee the following colloquy occurred between Congressman Thor Tollefson, Hon. Thomas E. Stakem, Jr., then Chairman, Federal Maritime Board (now Acting Administrator, Federal Maritime Ad-

ministration), and Edward Aptaker, Chief of the Board's Division of Regulations, Office of General Counsel:

Mr. TOLLEFSON. Now, if a conference contract system comes before you for approval, if what he [Mr. Bicks] said [quoted above] was true, how can you ever approve an application? How can you honestly ever approve it?

Mr. STAKEM. There is no question about it * * *, * * * it would be difficult under the many standards spelled out in the bill (H.R. 4299) to approve a conference system, * * *

* * * * *

Mr. APTAKER. * * * If * * * no system can be approved if it is intended to exclude competition, I think Mr. Bicks is right and that no system could be approved (hearings before the Special Subcommittee on Steamship Conferences, House Merchant Marine and Fisheries Committee, 87th Cong., 1st sess., on H.R. 4299 (Apr. 28, 1961), p. 469).

But perhaps the most devastating and persuasive indictment of these "intended to", "tends to", and "reasonably likely to" provisions came from Matthew S. Crinkley, executive vice president, Isbrandtsen Steamship Co., who, in testifying in favor of legalizing dual-rate contracts with appropriate safeguards said:

At page 3, line 10, there is a provision that the Board may permit the use of the conference contract dual-rate system provided it will not reasonably likely cause the exclusion of other carriers from the trade, and of course that means non-conference carriers. I believe one conference representative pointed out here what I am going to say but, nonetheless, it is my opinion that the aim and purpose of a conference group of carriers in instituting and using the conference contract dual-rate system or any other tying device is aimed at insuring, for the greatest extent possible, that all of the line business in a given trade is to be shipped with conference lines. It aims at excluding other carriers. It aims at either preventing or destroying other competition. It has no other purpose. To the extent that the conference lines can attain that result, the conference contract rate system is successful. To the extent that they cannot do that, to that extent it is not fulfilling the purpose intended. I do not think you can have a conference contract system in any trade which is not aimed at and would probably result in excluding other carriers from the trade. * * *

* * * * *

I think then that, if that is made a condition to permitting the conference contract rate system, you might as well not legalize it. I do not believe they can use one that will not have the effect to a more or less extent of excluding other carriers from the trade. That is my thinking on that point (hearings before the Special Subcommittee on Steamship Conferences of the House Merchant Marine and Fisheries Committee, 87th Cong., 1st sess., on H.R. 4299 (Mar. 29, 1961), pp. 348-349).

Mr. Crinkley pointed out that his objection expressed above to the section 1 "intended to" and "reasonably likely to" provision applied with equal force to the section 2 provision (p. 362). On August 2, 1961, Mr. Crinkley testified to the same general effect before the House Merchant Marine and Fisheries Subcommittee of your committee.

Clearly then, under standards such as these, few if any effective dual-rate contracts could be approved by the Commission. And those which were approved would be under a constant sword of disapproval. To make matters worse, the sword would be in the hands of nonconference lines which could wield it or not as they saw fit.

And finally, to top the matter off, your committee notes that the only lines which could possibly benefit in the foreseeable future from such provisions are foreign-flag lines. As we pointed out before, no American-flag line today desires to operate on a regular nonconference rate-cutting basis. Isbrandtsen has announced its intention to become a conference operator, and, according to testimony given by Mr. Crinkley, the Isbrandtsen Co., quite apart from its becoming subsidized, plans to join conferences.

2. In view of the eight specific safeguards which must be in dual-rate contracts before the Commission may approve them, must the Commission also be required to make findings, based on substantial evidence, that the contracts are not (1) detrimental to the commerce of the United States, or (2) contrary to the public interest, or (3) unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors?

In addition to eight specific safeguards which must be in each dual-rate contract, the bill as it passed the House would require the Commission to find that the contract was (1) not intended to or reasonably likely to cause the exclusion of any other carrier from the trade, (2) not detrimental to the commerce of the United States, and (3) not contrary to the public interest.

Your committee concluded that in order for the Commission to make these additional findings, the parties applying for permission to use dual-rate contracts would have to build extensive records before the Commission, even though there might be no opposition to the contracts, and even though they might clearly contain the eight matters expressly required by statute.

Your committee believes that if the eight specific requirements set forth in its amendments are met by the proposed contract, it should be entitled to Commission approval unless the Commission finds that the contract would be detrimental to the commerce of the United States, or contrary to the public interest, or unjustly discriminatory or unfair. We believe that any contract which contains the eight safeguards expressly required by the amended bill makes out a prima facie case that the contract is not detrimental to our commerce, or contrary to our public interest, or unjustly discriminatory or unfair.

The basic differences between the required findings of the House bill and the "unless the Commission finds" technique of our amendment stems from a difference of opinion as to the extent to which Congress can trust the regulatory agency to carry out its legislative mandate. The House bill, according to its report was drawn "to leave a minimum of discretion in the Board in regard to all matters

requiring action under that bill" (H. Rept. No. 498, June 8, 1961, p. 6). It is quite apparent that certain past Boards have not done an adequate job of discharging their regulatory responsibilities. Whether the present Commission, and future Commissions, can be relied on to do much better is an open question. We believe they can, especially since we intend to continue our present active interest in all matters relating to the regulation of international ocean shipping as it affects the foreign commerce of the United States.

Whereas the House bill made a studied effort to prescribe regulatory details and to deny discretion to the regulatory agency, your committee's amendments attempts to assign to the Commission considerably more authority, but by no means all of the discretion requested by the Department of Commerce and the Federal Maritime Board.

3. *Should every approvable dual rate contract provide that the contract shipper is not required to divert goods from natural routings not served by the contract carrier or conference where direct carriage is available?*

The House bill would require that approvable dual-rate contracts must expressly provide that they do not require the contract shipper "to divert shipment of goods from natural routings not served by the carrier or conference of carriers where direct carriage is available." Apparently this provision was designed to protect shippers who found themselves, in their dealings with dual-rate conferences, in positions similar to that in which the Swift Co. found itself in the Board's recently decided dockets 849, 851, and 854. There the Board found that the Gulf and South Atlantic Havana Steamship Conference, which does not serve St. Louis, Mo., violated sections 14 Third, 15, 16, and 17, Shipping Act, 1961, by asserting that its dual-rate contract required Swift not to use a nonconference barge service direct from St. Louis to Havana. Obviously, then, the Commission already has ample power to prevent dual-rate carriers and conferences from doing the sort of thing this provision of the House-passed bill attempts to outlaw. But to state the proscription in such inflexible statutory language might well require the Board not to approve or disapprove any dual-rate contract which gives the benefit of the lower contract rate to shippers in outports now served satisfactorily by transshipment rather than conference carrier direct service. This possibility seriously concerns carriers, shippers, and ports, and thus is probably best left to the Commission's discretion and supervision.

4. *Will conferences dissolve if it is required that as a condition precedent to Commission approval each conference's organic agreement must (1) designate an agent in the United States to receive service of process effective against all members, and (2) contain provisions that every signatory must provide records or other information, wherever located when required by Commission order?*

The House bill proposed an amendment to section 15, Shipping Act, 1916, which sharply raised this question. That bill also contained a related proposed amendment to section 21, Shipping Act, 1916, which would apply to every common carrier by water in foreign commerce and would limit the service of process provision to actions brought by or on behalf of the United States.

Both proposed amendments raised a storm of protests. The State Department urged this committee in the strongest terms possible to delete these provisions because of their irreparably damaging effect

upon important considerations of foreign policy. Twelve friendly friendly maritime nations filed protests with your committee through the Department of State. Every American- and foreign-flag conference lines urged their deletion. Only the Department of Commerce/Federal Maritime Board favor these provisions. Apparently the regulatory agency feels that so long as it is required to enforce the Shipping Act here and abroad with no distinction between those transactions which are in our import commerce and those which are in our export commerce, it must be given service-of-process powers and document-production powers similar to that contained in the House bill. Your committee believes, however, that "saying" the Commission has such powers, which obviously it cannot enforce effectively against the nationals of unwilling foreign governments, would result only in such provisions being enforceable effectively against American-flag lines, thereby prejudicing them in relation to their relatively unreachable foreign-flag competitors.

To date two U.S. courts of appeal have held that under the present section 21, Shipping Act, 1916, the Commission may lawfully order foreign flag ocean common carriers serving U.S. ports, inbound or outbound, to furnish documents in compliance with lawful section 21 orders, even though the documents are located in foreign countries. How the United States will be able to enforce such orders in the face of directives not to produce from five friendly maritime nations (Belgium, Italy, Japan, the Netherlands, and the United Kingdom) is a question of great foreign policy importance. Certainly, we would only muddy the waters and do violence to our foreign policy were we to leave such provisions in the bill. Furthermore, we are convinced that if we did so a number of steamship conferences would have to dissolve since a number of foreign lines would be compelled by their governments to withdraw, rather than submit to the receipt-of-process and document-production pledge required by the language of the bill.

5. *Should the Commission be given the express power to determine the reasonableness of conference freight rates?*

The bill would amend section 15, Shipping Act, 1916, to require the Commission to disapprove any conference rate, fare or charge which it finds so unreasonably high or low as to be detrimental to the commerce of the United States. Existing law empowers the Commission to disapprove any conference agreement which it finds detrimental to the commerce of the United States. Prior boards have asserted, on occasion, that this power, though it does not speak of reasonableness of conference freight rates, authorizes disapproval of any conference's agreement if the conference's rates become so unreasonably high or low so as to become detrimental to our foreign commerce. Apparently the threat to use its disapproval power has served adequately the regulatory agency's purposes.

Your committee finds, however, that it would be a serious mistake at this time in world affairs for the U.S. Government unilaterally to assert by statute such a bold claim of right to sit in judgment of the "reasonableness" of international ocean freight rates. That which is "our" foreign commerce in New York is Italy's in Genoa. If we set such a pattern, despite our many treaties of friendship, commerce, and navigation, what is to deter Great Britain from exercising a similar power? Since it requires no imagination to hypothesize the

chaos which would result if we determined that a \$40 rate on a particular commodity moving to Great Britain was so unreasonably high as to be detrimental to our foreign commerce and Great Britain made an opposite determination, we cannot subscribe to any statute proclaiming such a right in our Government. This position has been urged upon us by the Department of State, the Department of Commerce, all American and foreign flag ocean common carriers, and many American importers and exporters.

A provision in the House bill subject to the same rate regulation vice as that discussed above was found in the proposed amendment to section 19, Shipping Act, 1916. There it would have been made unlawful for any common carrier by water or conference thereof, "to reduce unreasonably its rates or charges for the purposes of destroying competition or eliminating a competitor." We have deleted that provision, too, for it would have necessitated U.S. Government supervision of not only ocean common carrier freight rates but would have seriously restrained their ability to meet the competition of tramps.

RECOMMENDATION

Your committee recommends and urges the enactment of the amended bill.

AGENCY COMMENTS

The following communications were received from interested Government agencies and were considered by the committee:

THE GENERAL COUNSEL OF THE TREASURY,
Washington, July 19, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 6775, a bill to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

The bill would amend the Shipping Act, 1916, to authorize steamship carriers in foreign commerce and conferences of such carriers, under certain conditions and subject to the approval of the Federal Maritime Board, to enter into agreements to charge lower rates to shippers who agree to ship cargo exclusively on vessels of members of the conference than would be charged to shippers who do not agree to such exclusive arrangements.

The proposed legislation is not of primary interest to this Department and the Department has no comment to make with respect to its general merits.

The Department has been advised by the Bureau of the Budget that there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

ROBERT H. KNIGHT, *General Counsel.*

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 26, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR SENATOR MAGNUSON: This has reference to your letter of June 15, 1961, requesting our comments on H.R. 6775, an act to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

This act would, among other things, authorize carriers or conferences of carriers in foreign commerce, under specified conditions and subject to the approval of the Federal Maritime Board pursuant to stated requirements or safeguards, to enter into contracts with shippers providing for rates lower than published rates upon agreement by such shippers to give all or any part of their patronage to such carriers or conferences of carriers.

The Department has been opposed to the use of the exclusive contract or dual system of rates because of the extent to which discrimination, prejudice, and reprisals can be practiced against shippers under such a system. However, we believe passage of this act, as presently written, will promote stability in the steamship industry and protect the interest of the shippers to a greater extent than at present.

The Department would, therefore, be agreeable to the passage of this act by the Senate.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

FEDERAL MARITIME BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., June 30, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: At the hearing on June 16, 1961, before the Subcommittee on Merchant Marine and Fisheries on the bill H.R. 6775, I noted that the Federal Maritime Board and the Secretary of Commerce had submitted to the House Merchant Marine and Fisheries Committee certain additional recommendations for amendment of the Shipping Act, 1916, which were not included in H.R. 6775 as it passed the House. I stated our belief that these largely procedural amendments were necessary to the adequate and effectual administration of the substantive provisions of the Shipping Act. As requested at the hearing, I am attaching herewith a copy of the report on H.R. 4299 (with attachment) which we submitted to the House Merchant Marine and Fisheries Committee. The suggested amendments are contained in the attachment to that report and their justification is contained on pages 13 to 18 of the report.

It should be noted, in connection with these proposals, that H.R. 6775 also contains provisions dealing with rulemaking and obtaining

of necessary information by the Board. However, the partial grant of rulemaking authority contained in the last section of H.R. 6775 is not a general grant of rulemaking authority under the act, and, since it mentions only certain sections of the Shipping Act, 1916, might be construed to negate rulemaking authority with respect to the other sections not specifically mentioned. Also, while the amendments which H.R. 6775 would make to sections 15 and 21 of the act would require carriers to appoint agents within the United States upon whom service of process could be made and would authorize the Board to require submission of information to it, H.R. 6775 would not authorize the Board to inspect carrier documents and copy them upon reasonable notice. H.R. 6775 also contains no provisions dealing with Board authority to issue interlocutory cease and desist orders, to conduct preliminary investigations, and for the other necessary provisions contained in our suggested amendments.

Sincerely yours,

THOS. E. STAKEM, *Chairman.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, August 3, 1961.

B-97278;

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Further reference is made to your letter of June 15, 1961, acknowledged on June 16, requesting the comments of the General Accounting Office concerning H.R. 6775, 87th Congress, 1st session, entitled "An act to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences."

The subject act is a matter of policy for determination by the Congress and, therefore, we make no recommendation with respect to its enactment. However, in the event the measure is given favorable consideration by your committee, we would like to suggest that in order to better protect the interests of the United States as a shipper by permitting the transportation of its property at reduced rates, there should be added to the proposed act a clause similar to that contained in section 6 of the Intercoastal Shipping Act, 1933, which reads as follows:

"That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal governments, or for charitable purposes."

See also the Interstate Commerce Act, as amended (49 U.S.C. 22).

We urge the adoption of the foregoing amendment for the following reasons:

Section 4(b)(3) of the proposed legislation provides as follows:

"No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Board and duly published and in effect at the time; nor shall any such carrier rebate, refund, or remit in any manner or by any device any portion of the

rates, or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs."

In this connection, attention is invited to the recent case of *Slick Airways, Inc. v. The United States*, Court of Claims No. 60-58, decided July 19, 1961, involving a situation wherein the Government in seeking a reduced rate for the United States contended that while section 403(b) of the Federal Aviation Act of 1958 does not permit reduced rates to the Government, there is nothing in the act to prevent it. In disposing of this contention, however, the court held, after quoting section 403(b) that—

"While the act is definite as to the classes of persons to whom air carriers are authorized to furnish free or reduced-rate transportation, the Government is not included in such exceptions to the general prohibition against 'greater or lesser or different compensation for air transportation * * * than the rates, fares, or charges specified in its currently effective tariffs.'"

Also, in the case of *United States v. Associated Air Transport, Inc.*, 275 F. 2d, 827, 838, the court of appeals, in considering the Government's assertion of preferential status under the Civil Aeronautics Act, stated that the "short of it is that when Congress seeks to give the Government a preferred transportation status, it does so in plain terms."

In the light of the above judicial interpretations, and since the proposed legislation makes no provision for reduced rates to the Government as a shipper, we strongly recommend to your committee the advisability of adopting the amendment suggested above. Otherwise, since under the proposed bill a private shipper may participate in exclusive patronage agreements for less than published tariff rates, it appears obvious that to this extent the Government would be discriminated against by being bound by the tariff requirements set forth in section 4(b)(3) of the present bill.

In response to your letter of July 17, 1961, acknowledged on July 19, requesting our comments concerning an amendment to H.R. 6775, intended to be proposed by Senators Gruening and Bartlett, we have no recommendation to offer.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF STATE,
Washington, August 15, 1961.

DEAR SENATOR ENGLE: The Department of State has had the opportunity of considering the revisions of H.R. 6775 made by the staff of your subcommittee. We believe that the proposed bill, as it would be amended, is a considerable improvement over H.R. 6775 as it passed the House of Representatives. It appears that much progress has been made toward simplifying the legislation, and the Department believes that it could endorse such a bill if it were reported out of the Committee on Commerce.

H.R. 6775, as it passed the House of Representatives, contained provisions in sections 15 and 21 which attempted to strengthen the authority of the Federal Maritime Board to require the production of documents and other information from outside the United States.

As you know, the Department strongly objected to those provisions in the belief that they would not add to the power of the Board and that they would be a source of continuing friction in our foreign relations. We note with satisfaction that these provisions would now be deleted. We strongly urge that your subcommittee adopt the staff print in this regard.

This Department has also stated its understanding that the primary purpose of this legislation should be the legalization of the use of dual-rate contracts with appropriate safeguards. We believe that the staff proposal is consistent with that purpose. We approve the language establishing general rulemaking power in the Board in order that it may determine, on a case-by-case basis, further safeguards that may be desirable.

We note further that the staff bill would vest the Board with the discretion to determine whether "neutral bodies" established by conferences for policing purposes should furnish documents and other information to the Board. We believe this provision conforms to our previous suggestion that the conferences be given an opportunity to demonstrate whether or not they can effectively police the obligations of their members under the agreements.

Neither H.R. 6775 nor the staff proposal, however, fully solves the basic problem: How much unilateral authority can, and should, be exercised by the U.S. Government in the field of international shipping? The Shipping Act of 1916, even as amended by this proposal, empowers the Federal Maritime Board to exert regulatory authority over countless transactions of various kinds carried out beyond this Nation's territory. Actions based upon this power undertaken by the Federal Maritime Board in the past have evoked numerous protests from foreign governments. For this reason, we urge again that a study be undertaken in the near future to examine this problem in detail and attempt to answer the questions of conflicting jurisdictions which have been raised. The Department reaffirms its readiness to cooperate fully in such a study.

Sincerely yours,

BROOKS HAYS, *Assistant Secretary.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 16, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN MAGNUSON: We have been furnished by Mr. Webster, counsel for the committee, with the subcommittee print of H.R. 6775, dated August 8, 1961. Mr. Webster informed us on August 3, 1961, that the Department of Justice's comments on this print of the bill would be desired by your committee. Accordingly, we are pleased to submit the following report on the subcommittee print.

H.R. 6775 would amend the Shipping Act, 1916, as amended (46 U.S.C. 801 et seq.), in various respects. The comments which follow are directed to the provisions of the subcommittee print of the bill intended to effect changes in existing law which are of serious concern to this Department.

Section 3 of H.R. 6775 would amend section 14 of the Shipping Act by adding a new section 14b which would require the Federal Maritime Board (hereinafter referred to as "the Board") to permit the use by any common carrier or conference of carriers in foreign commerce of any contract which provides lower rates to shippers or consignees who agree to give all or any fixed portion of their patronage to such carrier or conference, if such contract would not have certain proscribed effects and if it meets requirements enumerated in the bill. The effect of enactment of section 3 would be to sanction the use in the ocean shipping trades of the exclusive patronage contract/noncontract rate system, more frequently referred to as the dual-rate system.

Section 4 of the bill would amend section 15 of the Shipping Act which deals with Board approval of agreements between carriers. The principal changes concern conference agreements.

Sections 3 and 4 of the subcommittee print depart radically from the version of H.R. 6775 which was unanimously enacted by the House of Representatives on June 12, 1961. The House legislation contained provisions in sections 1 and 2 (to which secs. 3 and 4 of the subcommittee print are roughly comparable) designed to protect competing carriers, shippers, and the general public from untoward effects of the use of dual-rate contracts by ocean shipping conferences. These competitive safeguards—the very heart of this legislation, in our opinion—have been eliminated, either directly or in effect, from the subcommittee print. Therefore, were H.R. 6775 to be enacted in its present form, it would give ocean shipping conferences virtually unrestricted license to employ dual-rate contracts, and other conference practices, as deliberate predatory devices to stifle the competition of carriers not affiliated with the conferences.

As the committee is aware, ocean shipping conferences operating in the foreign commerce of the United States are private organizations, somewhat akin to trade associations, organized to further the business interests of the participating steamship lines. While the conferences must file their agreements with the Board and secure approval prior to initiating joint action, because of the international nature of the shipping industry, the supervision which the Board may exercise is quite limited and hardly comparable to the comprehensive regulation exercised with respect to domestic transportation industries by such agencies as the Civil Aeronautics Board and the Interstate Commerce Commission. For example, the Board has no jurisdiction over the reasonableness of rates charged by steamship lines in American foreign commerce and, except as to subsidized U.S. carriers, has no control over the adequacy, frequency, or regularity of service provided by steamship lines operating to and from U.S. ports.

The most profound change in H.R. 6775 which would be effected by the subcommittee print deals with the right of nonconference carriers to enter or serve ocean trades with freedom from predatory and anticompetitive onslaughts by the conferences.

The typical shipping conference represents a tremendous concentration of power. On practically every one of the U.S. foreign trade routes the conferences enjoy monopoly control; indeed, there are few, if any, in which the conference does not control at least 80 percent of the liner cargo movement. In most trades the percentage is much higher. Absent the antitrust exemption which Congress provided in the Shipping Act, the joint rate-fixing activity and the other

forms of anticompetitive collaboration typical of the conference system would do violence to the antitrust statutes. The history and weight of interpretation of the 1916 act amply demonstrate that while Congress made it possible for steamship lines to cooperate voluntarily in conference arrangements, Congress was equally determined to protect the rights of carriers who choose not to participate in conferences, as well as to insure to shippers the right to patronize non-conference carriers without retaliation from the conferences. Thus, for example, Congress specifically outlawed in section 14, first and second, of the Shipping Act two of the most vicious practices known in 1916 to have been employed by conferences against their competitors; namely, the deferred rebate and the operation of "fighting ships." In section 14, third, Congress similarly prohibited retaliation against shippers who patronize other carriers.

H.R. 6775 as enacted by the House of Representatives took into account the demand for legalization of dual-rate contracts but at the same time provided that such contracts not be used where designed to drive another carrier out of business or where the reasonably likely result of their use would be equally adverse to the public interest in maintenance of free competition. By contrast, the subcommittee print of August 8, 1961, reflects the philosophy that a carrier ought to join a conference or suffer the consequences of predatory conference action. It is this approach to legislation on dual rates which the Department of Justice finds so disturbing.

The changes effected in sections 1 and 2 of H.R. 6775 by the subcommittee print are not fully apparent until study is made of all the provisions of sections 3 and 4 of the subcommittee print, and particularly of section 4. While section 3 appears to retain in substance the language of the House-passed version which would bar approval of any dual-rate contract which is intended or will be reasonably likely to cause the exclusion of any carrier from the trade, section 4 would wholly nullify the purport of this key provision. Section 4 of the subcommittee print provides that "[i]f a common carrier is eligible but unwilling, on reasonable and equal terms and conditions, to join a conference approved by the Board and serving a trade, such carrier may not be deemed excluded from that trade, or prevented from entering it, or eliminated from it, within the meaning of all such terms as used in this section and section 14b of this act." The clear effect of the latter provision would be to deprive the nonconference carrier of the protection against unfair exclusion from a trade whenever the nonconference carrier has chosen to remain independent of the conference. Since almost every conference in the U.S. foreign trade would welcome the membership of the nonconference carrier in order to eliminate the latter's competition, it is impossible to conceive of a situation involving a nonconference carrier in competition with a conference which would not fall within the above-quoted language of the subcommittee print. In sum, therefore, the Committee on Commerce, in considering adoption of the proposed language of the subcommittee print vis-a-vis the language of the House enactment, will be deciding which concept shall henceforth apply to the ocean shipping industry: freedom of opportunity for all steamship lines, whether as conference members or independent operators, according to individual preference, as opposed to compulsory conference membership resulting in elimination of competition and monopolistic freight rates.

The Department of Justice considers indispensable to any reasonable enactment on dual-rate and steamship conference agreements the inclusion of language unequivocally barring the approval of such agreements where they are intended or will be reasonably likely to cause the exclusion of another carrier from the trade. Assistant Attorney General Loevinger indicated in his testimony before the Merchant Marine and Fisheries Subcommittee on August 3, 1961, how important are the actual and potential benefits of this legislative protection to American carriers, shippers and the general public. Judge Loevinger noted that, even though at a given moment there may be no American carrier operating independently of the conferences, the ability of an American carrier to withdraw without fear of conference retaliation provides it with leverage within the conference which may be exerted to avert action which may be adverse to its interests or to the foreign commerce of the United States. This is of extreme significance to American carriers which account for only a small vote in virtually every important conference serving our foreign trade.

It is important also to bear in mind that in the ocean trades competition is the only practical restraint on unduly high freight rates. In this connection, the Under Secretary of State submitted to the Merchant Marine and Fisheries Committee on August 3, 1961, data obtained from foreign governments in response to the State Department's inquiry of them how reasonableness of rates is assured in waterborne commerce. Eight foreign nations—Belgium, Denmark, Federal Republic of Germany, Finland, Italy, Netherlands, Norway, and Sweden—of the 11 questioned, replied that they rely on free competition to achieve reasonable rates. The subcommittee print, however, would leave the way open for shipping conferences to eliminate the very competition which the United States has historically fostered and which a majority of foreign nations espouse, by withdrawing protection of the rights of the competitor who may choose to offer rate competition.

We would further direct the committee's attention to the example cited in Assistant Attorney General Loevinger's testimony of the unconscionable rate charged on an important commodity moving in American foreign commerce when there was no independent carrier providing competition in the particular trade. The entry of an independent carrier brought about a reduction of the rate from \$80 to \$40, the latter level being one which, by the admission of one of the American carriers involved, still permitted profitable operations.

For the reasons outlined above, we urge the committee to delete the provision appearing in the subcommittee print beginning at line 22 on page 5, which completely nullifies the protection for nonconference carriers contained in the House-passed version. This important competitive safeguard, but for the language beginning at line 22 on page 5, would be preserved in the subcommittee print. We deem it essential that these protective provisions be retained as they were in the House-enacted version of H.R. 6775.

There are other provisions of the subcommittee print on which comment should also be made. Whereas section 1 of the House enactment would require the proponents of dual-rate systems to establish in Board proceedings that the proposed dual-rate contract would not have the proscribed effects, the subcommittee print would shift the

burden to opponents thereof or to the Board. The latter would have to prove by the preponderance of the evidence that a dual-rate contract would contravene the language of the bill. We believe that the House approach is the more reasonable. It places the burden where it belongs, that is, upon the proponent and expected beneficiary of the proposed dual-rate contract.

The subcommittee print also changes the House-enacted provisions dealing with dual-rate contracts by inserting the word "common" before the word "carrier" in several places. The insertion of the word "common" before the word "carrier" on line 17 of page 2 would limit the protection against exclusionary dual-rate systems to common carriers and would appear to permit the use of dual-rate contracts which are designed or are likely to exclude a carrier which is not a common carrier. We are aware of no justification for differentiating between the types of carrier that might be adversely affected by conference use of dual-rate contracts. We therefore recommend that the committee delete the word "common" wherever it has been added to H.R. 6775 by the subcommittee print. This comment would also apply to the addition of the word "common" on line 17 of page 5 of the print.

We turn now to the language of the subcommittee print which relates to provisions which must be expressly incorporated in any dual-rate contract to be lawful under the proposed legislation.

The subcommittee print would strike from H.R. 6775 the provision that prohibits dual-rate contracts from covering shipments of goods where the contract shipper has no legal right to select the carrier. The effect of this deletion will be to create endless controversy as to whether or not certain shipments, notably shipments of goods sold on f.o.b. and f.a.s. terms, are covered by approved dual-rate contracts. Without the provision contained in the House version, the way is left open for conferences to charge contract shippers with breach of their dual-rate contracts when they sell goods to buyers who elect to ship via nonconference carriers. The deletion of this provision could be construed to permit the conferences to forbid contract shippers from doing business with anyone who will not surrender his right to make his own shipping arrangements. We urge that this provision be restored to the bill in order that it be made clear that Congress does not intend to allow the shipping conferences to dictate the terms upon which one merchant must sell to another.

Another provision deleted from the House enactment which should be reinstated is that precluding any requirement that shippers divert their shipments from natural routings. The purpose of this provision was to insure shippers' freedom to choose the ports from which and to which to ship their goods. It is one thing for Congress to permit a system of contracts under which shippers must promise that when they ship from a particular port they will use conference vessels, but it is a wholly different thing to permit conferences to compel shippers to ship from a particular port when it may be more economical for them to ship from other ports which the conferences may not happen to serve. The Department of Justice recommends that the House provision on this point be reinstated in H.R. 6775.

We are also concerned with clause 3 of section 3 of the subcommittee print. This clause would limit damages recoverable for a shipper's breach of a dual-rate contract to actual damages, but the proviso

permits liquidated damages not to exceed the freight charges at the contract rate, less cost of handling.

We reiterate our previous objection to the proviso in this clause. It is our understanding that clause 3 is in the bill for the purpose of barring the past practice of disguising oppressive penalties in the form of liquidated damages. At the same time it was desired to permit liquidated actual damages where desired by the parties so as to avoid possible future uncertainties and controversies in situations where actual damages were difficult to prove.

We are convinced that the present formula will not achieve the objective of eliminating penalties. The proviso assumes that the actual damages for a shipper's breach of a dual rate contract are the same as damages resulting from breach of a space reservation or booking contract. As was made clear in Assistant Attorney General Loevinger's testimony on August 3, 1961, the present proviso, which in effect equates the two types of damage, can only result in damages for a shipper's dual rate contract breach far in excess of actual damages. In its present form, therefore, the bill still leaves the way open for unduly harsh and punitive results.

While we recognize that any effort to specify liquidated damages may not in all cases result in an approximation of the actual damages, we observe that no liquidated damage formula has been advanced which does not also constitute a severe penalty all out of proportion to the actual damages suffered by the conference or its members. Since the demand is for a measure which is certain, is fair to the carrier, but at the same time not oppressively punitive, we respectfully suggest that the committee place a maximum limit on liquidated damages of $1\frac{1}{2}$ times the spread between contract and noncontract rates. This, we believe, is a fair and reasonable approach to the problem. It would deter a shipper from disregarding his dual rate contractual obligations, but would not place him in jeopardy of being required, in the event of breach, to pay the conference an amount clearly having no logical relation to the loss which the conference can be considered to have sustained.

Clause 5 of section 3 of the subcommittee print permits the approval of dual-rate systems where the maximum spread between contract and noncontract rates is 15 percent. We view any spread in excess of 10 percent as unwarranted. In this connection, it should be noted that the House report indicated a problem in determining a maximum spread figure which would not penalize a shipper who does not choose to limit his shipments to conference vessels and which at the same time would provide a reasonable inducement to execute such agreements. It is the considered view of the Department of Justice that the 15-percent maximum spread provided for in clause 5 of section 3 of the subcommittee print does not strike such balance. Rather, it weighs heavily on the side of coercing shippers to limit their cargoes to conference vessels. All would agree that shippers should be provided with a realistic choice in deciding whether to contract to ship exclusively on conference vessels or whether to retain their right to ship on both conference and nonconference vessels as they choose. There is good reason to believe that a spread of 15 percent would foreclose this choice.

While the difference between a 10- and a 15-percent spread may seem to be solely a matter of degree, the fact is that in the highly

competitive and price-conscious world of international trade an additional handicap of 5 percentage points in freight rate markedly reduces a shipper's ability to determine whether he would prefer freedom to use both conference and nonconference vessels rather than being limited to the use of one type of service. We recommend that a 10-percent maximum be written into this clause by the committee.

We would next direct the committee's attention to the provision of section 4 of the bill which in effect would permit Board approval of agreements between conferences serving different trades which are competitive, with the proviso that each conference retain what the bill refers to as the "right of independent action." We urge the committee to delete the proviso thereby clearly prohibiting any inter-conference agreements. While the existing language of the bill gives a conference the right to take independent action on matters embraced within the agreement, it nevertheless permits all parties to an agreement to establish a uniform policy on rates and other competitive matters when it serves their purpose to do so. The Department of Justice is convinced that it is not in the public interest to permit agreements which may create a virtual monopoly of ocean transportation to or from this country. Congress should not sanction private rate-fixing schemes or supercartels which could embrace every port through which the foreign commerce of the United States is conducted. Such an arrangement would deny shippers the cost savings resulting from their location on or in proximity to a particular coastal range.

Another amendment to section 15 of the Shipping Act is the provision of section 4 of the subcommittee print requiring conferences to police their agreements. We question the policy requiring conferences to engage in private "policing." Congress should neither require nor permit cartels, even the ones in ocean shipping, to use penalties to coerce compliance with their cartel agreements. Nor do we believe Congress should delegate to cartels the responsibility for enforcing our maritime laws, especially in view of the potential harm that could be caused by unwarranted coerced disclosure of confidential business records to competitors and from the assessment by the cartels of harsh or discriminatory penalties.

Section 5 of the subcommittee print provides that agreements filed with the Board after passage of the proposed act are lawful until disapproved by the Board. There is no limit set on the period within which the Board must act on such agreements. The exemption from the antitrust laws of any cartel agreement, and certain cartel tying devices, is a most serious matter and a departure from our free-enterprise principle that competition should be the rule of trade. No dual-rate agreement should be permitted to go into effect for an unlimited period.

The Chairman of the Board, in his testimony before the House committee indicated that a 1-year period would be a realistic one within which to review and dispose of the number of agreements which are likely to be filed after passage of this legislation. If it takes the Board a longer period to review such agreements, at least the unsupervised dual-rate system cannot continue to be employed during any such delay. On the other hand, under the provision in the subcommittee print, any delays experienced by the Board would have the effect of permitting the unsupervised dual-rate system to continue in effect. Clearly, this would encourage dilatory tactics and tend to

postpone indefinitely the clarification of status of all fuel-rate contracts when for the past 3 years Congress has been seeking to provide.

The Department of Justice also recommends the deletion of section 7 of the subcommittee print. This section would permit serious inroads to be made upon the confidential relationship between shippers and carriers established by section 20 of the 1916 Shipping Act. It must be appreciated that shippers are required to disclose certain of their private business affairs to carriers to permit the assessment of proper tariff charges. Under section 20 of the Shipping Act the carriers are in return put under the obligation of maintaining such data in secrecy so that the shippers' business transactions are not disclosed to competitors and that such information is not used in any way to the shippers' detriment.

The proposed legislation would depart from the traditional concept of section 20 and would cause a substantial lessening of the protection which shippers now enjoy. Under the instant bill not only could a common carrier furnish data on a shipper's transactions without the shipper's consent but a "conference or any person, firm, corporation, or agency designated by the conference" could solicit information as to a shipper's transactions. Presumably this data could be solicited from freight forwarders, terminal operators, warehousemen, or any other persons subject to the Shipping Act who may have knowledge of the shipper's transactions. This would involve a radical change in public policy and, in our opinion, would open the way for widespread abuses and breaches of confidence in the shipping industry.

In addition to these potential results, the bill creates an apparent paradox. While a conference or its agent would be permitted by the proposed legislation to solicit information without limitation, those other than a conference carrier who might be solicited would still be restrained by the language of section 20 from disclosing the solicited information. Thus section 7 of the instant bill would authorize the solicitation of data from persons whom, were they to divulge it, could be criminally prosecuted for doing so. Any further attempt to deal with this anomalous situation would probably create more problems than it would solve. Even if all persons subject to the Shipping Act were to be authorized to release data for the purposes stated in the bill, a terminal operator or warehouseman would obviously act at his peril in relying on a representation that confidential data he was solicited to disclose was desired solely for one of the purposes permitted by the bill.

For the reasons indicated in the foregoing analysis, the Department of Justice respectfully urges the Committee on Commerce to amend the subcommittee print of H.R. 6775 in accordance with the recommendations contained herein.

The Budget Bureau has advised that it has no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BYRON WHITE,
Deputy Attorney General.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., August 18, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your letters of June 15, and July 17, 1961, request comments concerning H.R. 6775 and H.R. 6775 amendment, respectively, a bill and amendment thereto to amend the Shipping Act, as amended, to provide for the operation of steamship conferences.

This legislative proposal is primarily designed to legalize the so-called dual-rate system which has for many years been employed in maritime shipping. Under the dual-rate system, shippers who agree to use only conference vessels are accorded a lower rate than those who will not enter into such an agreement. The dual-rate system was viewed for a great many years by the Federal Maritime Board as a valid practice, although it is understood that the Department of Justice in recent years has considered the dual-rate system as constituting violations of antitrust legislation. Nevertheless, in May 1953, the Supreme Court declared the dual-rate system illegal. Shortly thereafter, Congress enacted legislation authorizing a continuance of the dual-rate system pending investigation into its merits by the House Committee on Merchant Marine and Fisheries.

Under its statute (63 Stat. 383; 40 U.S.C. 481), GSA is interested in transportation and traffic management as a user of transportation services. This agency is not directly affected as a shipper by the dual-rate system since the Government does not enter into special contract agreements with the various conferences. Indirectly, GSA enjoys the lower published conference rates, either by courtesy or tariff authority. Accordingly, the mission of GSA is not sufficiently affected to warrant an expression of opinion on the merits of H.R. 6775 or the proposed amendment thereto.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to your committee.

Sincerely yours,

JOHN L. MOORE, *Administrator.*

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

SECTION 14, SHIPPING ACT, 1916

SEC. 14 * * *

First. * * *

Second. * * *

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other *unjustly* discriminating or unfair methods, because such shipper

has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. * * *

* * * * *

SECTION 14a, SHIPPING ACT, 1916

* * * * *

SECTION 14b, SHIPPING ACT, 1916

SEC. 14b. Notwithstanding any other provision of this Act, on application the Federal Maritime Commission (hereinafter referred to as "Commission") shall, after notice, permit the use by any common carrier or conference of such carriers in foreign commerce of any contract, amendment or modification thereof, which is available to all shippers and consignees on equal terms and conditions, which provides lower rates to a shipper or consignee who agrees to give all or any fixed portion of his patronage to such carrier or conference of carriers unless the Commission finds that the contract, amendment or modification thereof, will be detrimental to the commerce of the United States or contrary to the public interest, or unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, and provided the contract, amendment or modification thereof, expressly (1) permits prompt release of the contract shipper from the contract with respect to any shipment or shipments for which the contracting carrier or conference of carriers cannot provide as much space as the contract shipper shall require on reasonable notice; (2) provides that whenever a tariff rate for the carriage of goods under the contract becomes effective, insofar as it is under the control of the carrier or conference of carriers, it shall not be increased before a reasonable period, but in no case less than ninety days, except in case of war or other force majeure; (3) covers only those goods of the contract shipper as to the shipment of which he has the legal right at the time of shipment to select the carrier: Provided, however, That it shall be deemed a breach of the contract if, before the time of shipment and with the intent to avoid his obligation under the contract, the contract shipper divests himself of the legal right to select the carrier and the shipment is carried by a carrier which is not a party to the contract; (4) limits damages recoverable for breach by either party to actual damages to be determined after breach in accordance with the principles of contract law: Provided, however, That the contract may specify that in the case of a breach by a contract shipper the damages may be an amount not exceeding the freight charges computed at the contract rate on the particular shipment, less the cost of handling; (5) permits the contract shipper to terminate at any time without penalty upon ninety days' notice; (6) provides for a spread between ordinary rates and rates charged contract shippers which the Commission finds to be reasonable in all the circumstances but which spread shall in no event be more than 15 per centum of the ordinary rates; (7) excludes cargo of the contract shipper which is loaded in bulk without mark or count; and (8) contains such other provisions not inconsistent herewith as the Commission shall require or permit. The Commission shall withdraw permission which it has granted under the authority contained in this section for the use of any contract if it finds, after notice and hearing, that the use of such contract is detrimental to the commerce of the

United States or contrary to the public interest, or is unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors. The carrier or conference of carriers may on ninety days' notice terminate without penalty the contract rate system herein authorized, in whole or with respect to any commodity: Provided, however, That after such termination the carrier or conference of carriers may not reinstitute such contract rate system or part thereof so terminated without prior permission by the Commission in accordance with the provisions of this section. As used in this section, the term "contract shipper" means a person other than a carrier or conference of carriers who is a party to a contract the use of which may be permitted under this section.

SECTION 15, SHIPPING ACT, 1916

[SEC. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the board a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understanding, conferences, and other arrangements.

[The board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations.

[Agreements existing at the time of the organization of the board shall be lawful until disapproved by the board. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the board.

[All agreements, modifications, or cancellations made after the organization of the board shall be lawful only when and as long as approved by the board, and before approval or after approval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

[Every agreement, modification, or cancellation lawful under this section shall be excepted from the provision of the Act approved, July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and amendments and acts supplementary thereto, and the provisions of sections seventy-three to seventy-seven, both inclusive, of the Act, approved August twenty-seventh, eighteen hundred and ninety-four,

entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", and amendments and acts not supplementary thereto.

【Whoever violates any provision of this section shall be liable to a penalty of \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.】

Sec. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements.

The Commission shall by order, after notice and hearing, disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between conferences of carriers serving different trades that would otherwise be naturally competitive unless each conference retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

The Commission shall disapprove any conference agreement, after notice and hearing, on a finding of inadequate policing and enforcing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by section 14b of this Act which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and

changes and amendments thereto, if otherwise in accordance with law, shall be permitted to take effect without prior approval upon compliance with the filing requirements of section 18(b) hereof and with the provisions of any regulations the Commission may adopt.

Every agreement, modification, or cancellation lawful under this section, or permitted under section 14b, shall be excepted from the provisions of the Act approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and amendments and Acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

SEC. 16. * * *

That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly:

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever[.]: *Provided, That within thirty days after enactment of this Act, or within thirty days after the effective date or the filing with the Commission, whichever is later, of any conference freight rate, rule, or regulation in the foreign commerce of the United States, the Governor of any State, Commonwealth, or possession of the United States may file a protest with the Commission upon the ground that the rate, rule, or regulation unjustly discriminates against that State, Commonwealth, or possession of the United States, in which case the Commission shall issue an order to the conference to show cause why the rate, rule, or regulation should not be set aside. Within 120 days from the date of the issuance of such order, the Commission shall determine whether or not such rate, rule, or regulation is unjustly discriminatory and issue a final order either dismissing the protest, or setting aside the rate, rule, or regulation.*

SECTION 18, SHIPPING ACT, 1916

SEC. 18(a) * * *

(b)(1) *From and after ninety days following enactment hereof every common carrier by water in foreign commerce and every conference of such carriers shall file with the Commission and keep open to public inspection tariffs showing all the rates, fares, and charges of such carrier or conference of carriers for transportation to and from United States ports and foreign ports between all points on its own route and on any through route which has been established. Such tariffs shall plainly show the places between which freight will be carried, and shall contain the classification of freight in force, and shall also state separately such terminal or other charge, privilege, or facility under the control of the carrier or conference of carriers which is granted or allowed, and any rules or regulations which in any wise change, effect, or determine any part or the aggregate of such aforesaid rates, or charges, and shall include*

specimens of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement. Copies of such tariffs shall be made available to any person and a reasonable charge may be made therefor. The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count.

(2) No change shall be made in the rates, fares, charges, classifications, rules or regulations, which results in an increase in cost to the shipper, except by the filing, as aforesaid, of a new tariff or tariffs which shall become effective not earlier than thirty days after the date of filing thereof with the Commission and such tariff or tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the time when the rates, fares, charges, classifications, rules or regulations as changed are to become effective: Provided, however, That the Commission may, in its discretion and for good cause, allow such changes upon less than the period of thirty days herein specified. Any new or initial rate, or any change in the rates, fares, charges, or classifications, rules, or regulations which results in a decreased cost to the shipper may become effective upon filing with the Commission. The term "tariff" as used in this paragraph shall include any amendment, supplement or reissue.

(3) No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and in effect at the time; nor shall any such carrier rebate, refund or remit in any manner or by any device any portion of the rates or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs. Nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, state, municipal, or foreign governments, or for religious organizations or religious personnel, or for charitable purposes; Provided, however, That appropriate authority therefor is set forth in a tariff or tariffs on file with the Commission.

(4) The Commission shall by regulations prescribe the form and manner in which the tariffs required by this section shall be filed; and the Commission is authorized to reject any tariff filed with it which is not in conformity with this section and with such regulations. Upon rejection by the Commission, a tariff shall be void and its use unlawful.

(5) Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

SECTION 20, SHIPPING ACT, 1916

SEC. 20. * * * **[.]**; or to prevent the giving by any common carrier by water which is a party to a conference agreement approved pursuant to section 15 of this Act, or by any other person subject to this Act, to, or the soliciting or receipt by the conference or any person, firm, corporation, or agency designated by the conference, of information for the purpose of determining whether a shipper or consignee has committed a breach of an agreement with the conference or its member lines or of determining whether a conference member has committed a breach of the

conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act shall be unlawful.

SECTION 43, SHIPPING ACT, 1916

SEC. 43. The Commission shall make such rules and regulations as may be necessary to carry out the provisions of this Act.

Public Law 85-626

85th Congress, S. 3916

August 12, 1958

(As amended by Public Law 86-542, 86th Congress, H.R. 10840, June 29, 1960, as further amended by Public Law 87-75, 87th Congress, S. 2154, June 30, 1961)

AN ACT To amend the Shipping Act, 1916

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 14 of the Shipping Act, 1916, is amended by inserting at the end thereof the following: "Provided, That nothing in this section or elsewhere in this Act, shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by the members of a conference on May 19, 1958, which conference is organized under an agreement approved under section 15 of this Act by the regulatory body administering this Act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this Act. The term 'dual rate contract arrangement' as used herein means a practice whereby a conference establishes tariffs of rates at two levels the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree."

SEC. 2. This Act shall be effective immediately upon enactment and shall cease to be effective on and after [September 15, 1961] March 31, 1962.



Calendar No. 842

87TH CONGRESS
1ST SESSION

H. R. 6775

[Report No. 860]

IN THE SENATE OF THE UNITED STATES

JUNE 13, 1961

Read twice and referred to the Committee on Commerce

AUGUST 31, 1961

Reported by Mr. ENGLE, with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To amend the Shipping Act, 1916, as amended, to provide
for the operation of steamship conferences.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 14, Shipping Act, 1916, is hereby amended as
4 follows:

5 ~~(a)~~ Insert “(a)” immediately after “First”.

6 ~~(b)~~ Add the following subsection ~~(b)~~ at the end of
7 paragraph “First”:

8 ~~“(b) Charge or enter into any combination, agreement,~~
9 ~~or understanding, express or implied, to charge any person,~~

1 solely or in part because he does not agree to or give all or
2 any part of his patronage, higher freight rates or charges
3 than are accorded to any person who does agree to or give
4 such patronage: *Provided, however,* That notwithstanding
5 any other provision of this Act, on application the Board
6 shall, after notice, permit the use by any carrier or confer-
7 ence of carriers in foreign commerce of any contract, amend-
8 ment or modification thereof, which is available to all
9 shippers and consignees on equal terms, and conditions, which
10 provides lower rates to a shipper or consignee who agrees to
11 give all or any part of his patronage to such carrier or con-
12 ference of carriers and which the Board finds is not intended,
13 and will not be reasonably likely, to cause the exclusion of
14 any other carrier from the trade, and which the Board finds
15 will be neither detrimental to the commerce of the United
16 States nor contrary to the public interest, and which expressly
17 ~~(1)~~ assures to the contract shipper as much of the available
18 space on the vessels of the carrier or conference of carriers as
19 is necessary, on reasonable notice, to meet the normal de-
20 mands of the contract shipper; ~~(2)~~ provides that, whenever a
21 tariff rate for the carriage of goods becomes effective, insofar
22 as it is under the control of the carrier or conference of car-
23 riers, it shall not be increased for a reasonable period, but in
24 no case less than ninety days; ~~(3)~~ covers only those goods of
25 the contract shipper as to the shipment of which he has the

1 legal right at the time of shipment to select the carrier; ~~(4)~~
2 does not require the contract shipper to divert shipment of
3 goods from natural routings not served by the carrier or con-
4 ference of carriers where direct carriage is available; ~~(5)~~
5 limits damages recoverable for breach by either party to
6 actual damages to be determined after breach in accordance
7 with the principles of commercial contract law: *Provided,*
8 *however,* That the contract may specify that in the case of
9 a breach by a contract shipper or consignee the damages
10 may be an amount not exceeding the contract rate on the
11 particular shipment, less the cost of handling; ~~(6)~~ permits
12 the contract shipper to terminate at any time without
13 penalty upon ninety days' notice; ~~(7)~~ provides for a spread
14 between ordinary rates and rates charged for contract
15 shippers that the Board finds to be reasonable in all the cir-
16 cumstances but which spread shall in no event be more than
17 ~~15~~ per centum of the ordinary rates; and ~~(8)~~ contains such
18 other provisions not inconsistent herewith as the Board shall
19 require or permit. The Federal Maritime Board shall with-
20 draw permission which it has granted under the authority
21 contained in this section for the use of any contract if it finds,
22 after notice and hearing, that the use of such contract tends to
23 cause the elimination from, or prevent the entry into, the
24 trade of any carrier, or is detrimental to the commerce of the
25 United States or contrary to the public interest. The

1 carrier or conference of carriers may on ninety days
2 notice terminate without penalty the contract rate
3 system herein authorized, in whole, or with respect
4 to any commodity or service: *Provided, however,* That after
5 such termination the carrier or conference of carriers
6 may not reinstitute such contract rate system or part thereof
7 so terminated without prior Board approval in accordance
8 with the provisions of this section. As used in this section,
9 the term 'contract shipper' means a person other than a car-
10 rier or conference of carriers who is a party to a contract the
11 use of which may be permitted under this section."

12 SEC. 2. Section 15, Shipping Act, 1916, is amended to
13 read as follows:

14 "SEC. 15. That every common carrier by water, or
15 other person subject to this Act, shall file immediately
16 with the Board a true copy, or, if oral, a true and com-
17 plete memorandum, of every agreement with another such
18 carrier or other person subject to this Act, or modification
19 or cancellation thereof, to which it may be a party or con-
20 form in whole or in part, fixing or regulating transportation
21 rates or fares; giving or receiving special rates, accommo-
22 dations, or other special privileges or advantages; controlling,
23 regulating, preventing, or destroying competition; pooling
24 or apportioning earnings, losses, or traffic; allotting ports or
25 restricting or otherwise regulating the number and char-

1 aacter of sailings between ports; limiting or regulating in any
2 way the volume or character of freight or passenger traffic
3 to be carried; or in any manner providing for an exclusive,
4 preferential, or cooperative working arrangement. The
5 term 'agreement' in this section includes understandings,
6 conferences, and other arrangements.

7 "The Board shall by order, after notice and hearing,
8 disapprove, cancel, or modify any agreement, or any modi-
9 fication or cancellation thereof, whether or not previously
10 approved by it, that it finds to be unjustly discriminatory
11 or unfair as between carriers, shippers, exporters, importers,
12 or ports, or between exporters from the United States and
13 their foreign competitors, or to operate to the detriment of
14 the commerce of the United States, or to be in violation
15 of this Act, and shall approve all other agreements, modifi-
16 cations, or cancellations that it finds not contrary to the
17 public interest. No such agreement shall be approved, nor
18 shall continued approval be permitted for any agreement,
19 ~~(1)~~ between carriers or conferences of carriers serving dif-
20 ferent trades that would otherwise be naturally competitive,
21 unless in the case of agreements between carriers, each ear-
22 rier, or in the case of agreements between conferences, each
23 conference, retains the right of independent action, or ~~(2)~~
24 which permits shippers who act as carrier agents to repre-
25 sent such carrier in conference activities unless the Board

1 finds that no other qualified person is available; or ~~(3)~~
2 whose probable effect will be reasonably likely to exclude
3 any other carrier from the trade; or ~~(4)~~ in respect to
4 conference agreements; fails to provide reasonable and
5 equal terms and conditions for the commission and re-
6 admission of other qualified carriers in the trade; or fails
7 to provide that any member may withdraw from member-
8 ship without penalty upon reasonable notice.

9 “No such agreement shall be approved unless it shall
10 ~~(1)~~ designate a person upon whom service of process
11 may be made within the United States which will be effec-
12 tive against every signatory to such agreement; and ~~(2)~~
13 contains provisions that every signatory shall provide rec-
14 ords or other information, wherever located, required by any
15 order of the Board which contains the minimum notice
16 provisions required by the Administrative Procedure Act
17 ~~(5 U.S.C. 1001 and the following)~~. No conference agree-
18 ment shall be approved unless the Board finds that it con-
19 tains effective provisions for policing the obligations under
20 it. The Board shall disapprove any such agreement, after
21 reasonable notice, on a finding of inadequate policing of the
22 obligations under it, or of failure or refusal to adopt and
23 maintain reasonable procedures for the consideration of
24 shippers’ requests and complaints.

25 “Any agreement and any modification or cancellation

1 of any agreement not approved, or disapproved, by the
2 Board shall be unlawful, and agreements, modifications, and
3 cancellations shall be lawful only when and as long as
4 approved by the Board; before approval or after disapproval
5 it shall be unlawful to carry out in whole or in part, directly
6 or indirectly, any such agreement, modification, or cancel-
7 lation; except that tariff rates, fares, and charges, and classi-
8 fications, rules, and regulations explanatory thereof (includ-
9 ing changes in special rates and charges covered by the
10 proviso to section 14 First ~~(b)~~ which do not involve a
11 change in the spread between such rates and charges and
12 the rates and charges applicable to noncontract shippers)-
13 agreed upon by approved conferences, and changes and
14 amendments thereto, if otherwise in accordance with law,
15 be permitted to take effect without prior approval upon
16 compliance with the publication and filing requirements of
17 section 18 ~~(b)~~ hereof and with the provisions of any regula-
18 tions the Board may adopt. The Board shall disapprove
19 any conference rate, fare, or charge which after hearing it
20 finds to be so unreasonably high or low as to be detrimental
21 to the commerce of the United States.

22 “Every agreement, modification, or cancellation lawful
23 under this section, or permitted under section 14 First, shall
24 be excepted from the provisions of the Act approved July
25 2, 1890, entitled ‘An Act to protect trade and commerce

1 against unlawful restraints and monopolies', and amendments
 2 and Acts supplementary thereto; and the provisions of
 3 sections 73 to 77, both inclusive, of the Act approved
 4 August 27, 1894, entitled 'An Act to reduce taxation, to
 5 provide revenue for the Government, and for other purposes',
 6 and amendments and Acts supplementary thereto.

7 "Whoever violates any provision of this section shall be
 8 liable to a penalty of not more than \$1,000 for each day such
 9 violation continues, to be recovered by the United States in a
 10 civil action."

11 SEC. 3. Notwithstanding the provisions of sections 14
 12 First and 15 of the Shipping Act, 1916, as amended by this
 13 Act, all agreements which are unlawful under the Shipping
 14 Act, 1916, immediately prior to enactment of this Act, shall
 15 remain lawful for one year after enactment of this Act unless
 16 disapproved, canceled, or modified by the Board pursuant to
 17 the provisions of the Shipping Act, 1916, as amended by
 18 this Act, within that year.

19 SEC 4. Section 18, Shipping Act, 1916, is hereby
 20 amended as follows:

21 ~~(a)~~ Insert "~~(a)~~" immediately after the section number
 22 "~~18~~".

23 ~~(b)~~ Add the following subsection 18(b):

24 "~~(b)~~(1) From and after ninety days following enact-
 25 ment hereof every common carrier by water in foreign com-

1 merce and every conference of such carriers shall file with
2 the Board and keep open to public inspection tariffs showing
3 all the rates, fares, and charges of such carrier or conference
4 of carriers for transportation between all points on its own
5 route and on any through route which has been established.
6 Such tariffs shall plainly show the places between which
7 freight will be carried, and shall contain the classification of
8 freight in force, and shall also state separately such terminal
9 or other charge, privilege, or facility under the control of the
10 carrier or conference of carriers which is granted or allowed,
11 and any rules or regulations which in any wise change, effect,
12 or determine any part of the aggregate of such aforesaid
13 rates, or charges, and shall include specimens of any bill of
14 lading, contract of affreightment, or other document evidenc-
15 ing the transportation agreement. Copies of such tariffs shall
16 be made available to any person and a reasonable charge may
17 be made therefor. The requirements of this section shall not
18 be applicable to cargo loaded and carried in bulk without
19 mark or count.

20 ~~“(2)~~ No change shall be made in the rates, fares,
21 charges, classifications, rules or regulations, which results in
22 an increase in cost to the shipper, nor shall any new or
23 initial rate of any common carrier by water in foreign com-
24 merce or conference of such carriers be instituted, except

1 by the publication, and filing, as aforesaid, of a new tariff or
2 tariffs which shall become effective not earlier than thirty
3 days after the date of publication and filing thereof with the
4 Board, and such tariff or tariffs shall plainly show the changes
5 proposed to be made in the tariff or tariffs then in force and
6 the time when the rates, fares, charges, classifications, rules
7 or regulations as changed are to become effective: *Provided,*
8 That the Board may, in its discretion and for good cause,
9 allow such changes upon less than the period of thirty days
10 herein specified. Any change in the rates, fares, charges,
11 or classifications, rules or regulations which results in a de-
12 creased cost to the shipper may become effective upon the
13 publication and filing with the Board. The term 'tariff' as
14 used in this paragraph shall include any amendment, supple-
15 ment or reissue.

16 “(3) No common carrier by water in foreign commerce
17 or conference of such carriers shall charge or demand or
18 collect or receive a greater or less or different compensation
19 for the transportation of property or for any service in con-
20 nection therewith than the rates, and charges which are
21 specified in its tariffs on file with the Board and duly pub-
22 lished and in effect at the time; nor shall any such carrier
23 rebate, refund or remit in any manner or by any device any
24 portion of the rates, or charges so specified, nor extend or

1 deny to any person any privilege or facility, except in ac-
2 cordance with such tariffs.

3 “(4) The Board shall by regulations prescribe the
4 form and manner in which the tariffs required by this section
5 shall be published and filed; and the Board is authorized
6 to reject any tariff filed with it which is not in conformity
7 with this section and with such regulations. Any tariff so
8 rejected by the Board shall be void and its use shall be
9 unlawful.

10 “(5) Whoever violates any provision of this section
11 shall be liable to a penalty of not more than \$1,000 for
12 each day such violation continues, to be recovered by the
13 United States in a civil action.”

14 SEC. 5. Section 19, Shipping Act, 1916, is amended
15 by inserting “(a)” immediately after the section number
16 “19”, and adding the following subsection:

17 “(b) It shall be unlawful for any common carrier by
18 water or any conference of carriers, directly or indirectly,
19 to reduce unreasonably its rates or charges for the purpose
20 of destroying competition or eliminating a competitor: *Pro-*
21 *vided, however,* That nothing contained in the Act shall
22 be construed to prohibit a common carrier by water or a
23 conference of carriers from reducing its rates or charges in
24 good faith to meet competition. Whoever violates any pro-

1 vision of this subsection ~~(b)~~ shall be liable to a penalty of
2 not more than \$1,000 for each day such violation continues,
3 to be recovered by the United States in a civil action.”

4 SEC. 6. Section 20, Shipping Act, 1916, is amended
5 by changing the period at the end thereof to a semicolon
6 and adding the following:

7 “or to prevent the giving by any common carrier by water
8 which is a party to a conference agreement approved pur-
9 suant to section 15 of this Act to, or the soliciting or receipt
10 by the conference or any person, firm, corporation, or agency
11 designated by the conference, information for the purpose
12 of determining whether a shipping or consignee has com-
13 mitted a breach of an agreement with the conference or its
14 member lines or of determining whether a conference mem-
15 ber has committed a breach of the conference agreement,
16 or for the purpose of compiling statistics of cargo move-
17 ment.”

18 SEC. 7. Section 21, Shipping Act, 1916, is amended to
19 read as follows:

20 “SEC. 21. ~~(a)~~ That the Board may require any com-
21 mon carrier by water, or other person subject to this Act,
22 or any officer, receiver, trustee, lessee, agent, or employee
23 thereof, to file with it any periodical or special report,
24 or any account, record, rate, or charge, or any memorandum
25 of any facts and transactions appertaining to the business of

1 such carrier or other person subject to this Act. Such re
2 port, account, record, rate, charge, or memorandum shall
3 be under oath whenever the Board so requires, and shall be
4 furnished in the form and within the time prescribed by the
5 Board. Every common carrier by water engaged in the
6 foreign commerce of the United States shall ~~(1)~~ designate
7 a person upon whom service of process may be made within
8 the United States in any action, proceeding, or investigation
9 brought by or on behalf of the United States or any agency
10 thereof, and ~~(2)~~ provide records or other information, wher-
11 ever located, required by any order of the Board which
12 contains the minimum notice provisions required by the
13 Administrative Procedure Act ~~(5 U.S.C. 1001 and the~~
14 ~~following)~~. Whoever fails to file any report, account, rec-
15 ord, rate, charge, memorandum, or other information as
16 required by this section shall forfeit to the United States
17 the sum of \$100 for each day of such default.

18 “~~(b)~~ Whoever willfully falsifies, destroys, mutilates, or
19 alters any such report, account, record, rate, charge, or
20 memorandum, or willfully files a false report, account, record,
21 rate, charge, or memorandum shall be guilty of a misde-
22 meanor, and subject upon conviction to a fine of not more
23 than \$1,000, or imprisonment for not more than one year,
24 or to both such fine and imprisonment.

1 ~~“(e) The Board shall make such rules and regulations~~
2 ~~as may be necessary to carry out sections 14 First (b), 15,~~
3 ~~18 (b), 19 (b), 20, and 21 of this Act.”~~

4 *That paragraph Third of section 14, Shipping Act, 1916,*
5 *is amended by inserting the word “unjustly” before the word*
6 *“discriminating”.*

7 *SEC. 2. The Shipping Act, 1916, is amended by adding*
8 *after section 14a a new section to read as follows:*

9 ~~“SEC. 14b. Notwithstanding any other provision of this~~
10 ~~Act, on application the Federal Maritime Commission (here-~~
11 ~~inafter ‘Commission’) shall, after notice, permit the use by~~
12 ~~any common carrier or conference of such carriers in foreign~~
13 ~~commerce of any contract, amendment, or modification~~
14 ~~thereof, which is available to all shippers and consignees on~~
15 ~~equal terms and conditions, which provides lower rates to a~~
16 ~~shipper or consignee who agrees to give all or any fixed por-~~
17 ~~tion of his patronage to such carrier or conference of carriers~~
18 ~~unless the Commission finds that the contract, amendment, or~~
19 ~~modification thereof, will be detrimental to the commerce of~~
20 ~~the United States or contrary to the public interest, or unjustly~~
21 ~~discriminatory or unfair as between shippers, exporters, im-~~
22 ~~porters, or ports, or between exporters from the United States~~
23 ~~and their foreign competitors, and provided the contract,~~
24 ~~amendment, or modification thereof, expressly (1) permits~~
25 ~~prompt release of the contract shipper from the contract with~~

1 *respect to any shipment or shipments for which the contract-*
2 *ing carrier or conference of carriers cannot provide as much*
3 *space as the contract shipper shall require on reasonable*
4 *notice; (2) provides that whenever a tariff rate for the carri-*
5 *age of goods under the contract becomes effective, insofar as*
6 *it is under the control of the carrier or conference of carriers,*
7 *it shall not be increased before a reasonable period, but in no*
8 *case less than ninety days, except in case of war or other*
9 *force majeure; (3) covers only those goods of the contract*
10 *shipper as to the shipment of which he has the legal right at*
11 *the time of shipment to select the carrier: Provided, however,*
12 *That it shall be deemed a breach of the contract if, before*
13 *the time of shipment and with the intent to avoid his obliga-*
14 *tion under the contract, the contract shipper divests himself of*
15 *the legal right to select the carrier and the shipment is carried*
16 *by a carrier which is not a party to the contract; (4) limits*
17 *damages recoverable for breach by either party to actual*
18 *damages to be determined after breach in accordance with*
19 *the principles of contract law: Provided, however, That*
20 *the contract may specify that in the case of a breach*
21 *by a contract shipper the damages may be an amount*
22 *not exceeding the freight charges computed at the contract*
23 *rate on the particular shipment, less the cost of handling; (5)*
24 *permits the contract shipper to terminate at any time without*
25 *penalty upon ninety days' notice; (6) provides for a spread*

1 *between ordinary rates and rates charged contract shippers*
2 *which the Commission finds to be reasonable in all the*
3 *circumstances but which spread shall in no event be more*
4 *than 15 per centum of the ordinary rates; (7) excludes cargo*
5 *of the contract shipper which is loaded in bulk without mark*
6 *or count; and (8) contains such other provisions not incon-*
7 *sistent herewith as the Commission shall require or permit.*
8 *The Commission shall withdraw permission which it has*
9 *granted under the authority contained in this section for the*
10 *use of any contract if it finds, after notice and hearing, that*
11 *the use of such contract is detrimental to the commerce of the*
12 *United States or contrary to the public interest, or is unjustly*
13 *discriminatory or unfair as between shippers, exporters, im-*
14 *porters, or ports, or between exporters from the United*
15 *States and their foreign competitors. The carrier or confer-*
16 *ence of carriers may on ninety days' notice terminate without*
17 *penalty the contract rate system herein authorized, in whole*
18 *or with respect to any commodity: Provided, however, That*
19 *after such termination the carrier or conference of carriers*
20 *may not reinstitute such contract rate system or part thereof*
21 *so terminated without prior permission by the Commission in*
22 *accordance with the provisions of this section. As used in this*
23 *section, the term 'contract shipper' means a person other*
24 *than a carrier or conference of carriers who is a party to a*
25 *contract the use of which may be permitted under this section.'*

1 *SEC. 3. Section 15, Shipping Act, 1916, is amended*
2 *to read as follows:*

3 *“SEC. 15. That every common carrier by water, or other*
4 *person subject to this Act, shall file immediately with the*
5 *Commission a true copy, or, if oral, a true and complete*
6 *memorandum, of every agreement with another such carrier*
7 *or other person subject to this Act, or modification or cancel-*
8 *lation thereof, to which it may be a party or conform in whole*
9 *or in part, fixing or regulating transportation rates or fares;*
10 *giving or receiving special rates, accommodations, or other*
11 *special privileges or advantages; controlling, regulating, pre-*
12 *venting, or destroying competition; pooling or apportioning*
13 *earnings, losses, or traffic; allotting ports or restricting or*
14 *otherwise regulating the number and character of sailings be-*
15 *tween ports; limiting or regulating in any way the volume or*
16 *character of freight or passenger traffic to be carried; or in*
17 *any manner providing for an exclusive, preferential, or coop-*
18 *erative working arrangement. The term ‘agreement’ in this*
19 *section includes understandings, conferences, and other*
20 *arrangements.*

21 *“The Commission shall by order, after notice and hear-*
22 *ing, disapprove, cancel, or modify any agreement, or any*
23 *modification or cancellation thereof, whether or not previously*
24 *approved by it, that it finds to be unjustly discriminatory or*
25 *unfair as between carriers, shippers, exporters, importers, or*

1 ports, or between exporters from the United States and their
2 foreign competitors, or to operate to the detriment of the com-
3 merce of the United States, or to be contrary to the public
4 interest, or to be in violation of this Act, and shall approve
5 all other agreements, modifications, or cancellations. No
6 such agreement shall be approved, nor shall continued ap-
7 proval be permitted for any agreement (1) between confer-
8 ences of carriers serving different trades that would otherwise
9 be naturally competitive unless each conference retains the
10 right of independent action, or (2) in respect to any confer-
11 ence agreement, which fails to provide reasonable and equal
12 terms and conditions for admission and readmission to con-
13 ference membership of other qualified carriers in the trade, or
14 fails to provide that any member may withdraw from mem-
15 bership upon reasonable notice without penalty for such with-
16 drawal.

17 “The Commission shall disapprove any conference agree-
18 ment, after notice and hearing, on a finding of inadequate
19 policing and enforcing of the obligations under it, or of fail-
20 ure or refusal to adopt and maintain reasonable procedures
21 for promptly and fairly hearing and considering shippers’
22 requests and complaints.

23 “Any agreement and any modification or cancellation
24 of any agreement not approved, or disapproved, by the Com-
25 mission shall be unlawful, and agreements, modifications, and

1 cancellations shall be lawful only when and as long as ap-
2 proved by the Commission; before approval or after disap-
3 proval it shall be unlawful to carry out in whole or in part,
4 directly or indirectly, any such agreement, modification, or
5 cancellation; except that tariff rates, fares, and charges, and
6 classifications, rules, and regulations explanatory thereof in-
7 cluding changes in special rates and charges covered by sec-
8 tion 14b of this Act which do not involve a change in the
9 spread between such rates and charges and the rates and
10 charges applicable to noncontract shippers) agreed upon by
11 approved conferences, and changes and amendments there-
12 to, if otherwise in accordance with law, shall be permitted to
13 take effect without prior approval upon compliance with the
14 filing requirements of section 18(b) hereof and with the
15 provisions of any regulations the Commission may adopt.

16 “Every agreement, modification, or cancellation lawful
17 under this section, or permitted under section 14b, shall be
18 excepted from the provisions of the Act approved July 2,
19 1890, entitled ‘An Act to protect trade and commerce against
20 unlawful restraints and monopolies’, and amendments and
21 Acts supplementary thereto, and the provisions of sections
22 73 to 77, both inclusive, of the Act approved August 27,
23 1894, entitled ‘An Act to reduce taxation, to provide revenue
24 for the Government, and for other purposes’, and amend-
25 ments and Acts supplementary thereto.

1 *“Whoever violates any provision of this section shall be*
2 *liable to a penalty of not more than \$1,000 for each day such*
3 *violation continues to be recovered by the United States in a*
4 *civil action.”*

5 *SEC. 4. Notwithstanding the provisions of section 14b*
6 *and 15, Shipping Act, 1916, as amended by this Act,*
7 *all existing agreements which are lawful under the Shipping*
8 *Act, 1916, immediately prior to the enactment of this Act,*
9 *shall remain lawful unless disapproved, canceled, or modified*
10 *by the Commission pursuant to the provisions of the Shipping*
11 *Act, 1916, as amended by this Act: Provided, however, That*
12 *all such existing agreements which are rendered unlawful*
13 *by the provisions of such Act as hereby amended must be*
14 *amended to comply with the provisions of such Act as hereby*
15 *amended, and if such amendments are filed for approval*
16 *within six months after the enactment of this Act, such agree-*
17 *ments so amended shall be lawful unless and until dis-*
18 *approved, canceled, or modified by the Commission, but if not*
19 *so amended and filed within said six-month period, such*
20 *agreements, if thereafter found to be in violation of the Act,*
21 *as hereby amended, may be declared unlawful by the Com-*
22 *mission from the expiration of said six-month period.*

23 *SEC. 5. Section 18, Shipping Act, 1916, is hereby*
24 *amended as follows:*

1 (a) Insert “(a)” immediately after the section number
2 “18”.

3 (b) Add the following subsection 18(b):

4 “(b)(1) From and after ninety days following enact-
5 ment hereof every common carrier by water in foreign com-
6 merce and every conference of such carriers shall file with
7 the Commission and keep open to public inspection tariffs
8 showing all the rates, fares, and charges of such carrier or
9 conference of carriers for transportation to and from United
10 States ports and foreign ports between all points on its own
11 route and on any through route which has been established.
12 Such tariffs shall plainly show the places between which
13 freight will be carried, and shall contain the classification of
14 freight in force, and shall also state separately such terminal
15 or other charge, privilege, or facility under the control of the
16 carrier or conference of carriers which is granted or allowed,
17 and any rules or regulations which in anywise change, effect,
18 or determine any part or the aggregate of such aforesaid rates,
19 or charges, and shall include specimens of any bill of lading,
20 contract of affreightment, or other document evidencing the
21 transportation agreement. Copies of such tariffs shall be
22 made available to any person and a reasonable charge may
23 be made therefor. The requirements of this section shall not

1 *be applicable to cargo loaded and carried in bulk without*
2 *mark or count.*

3 (2) *No change shall be made in the rates, fares, charges,*
4 *classifications, rules, or regulations, which results in an in-*
5 *crease in cost to the shipper, except by the filing, as aforesaid,*
6 *of a new tariff or tariffs which shall become effective not*
7 *earlier than thirty days after the date of filing thereof with*
8 *the Commission, and each such tariff or tariffs shall plainly*
9 *show the changes proposed to be made in the tariff or tariffs*
10 *then in force and the time when the rates, fares, charges, clas-*
11 *sifications, rules, or regulations as changed are to become*
12 *effective: Provided, however, That the Commission may, in*
13 *its discretion and for good cause, allow such changes upon*
14 *less than the period of thirty days herein specified. Any new*
15 *or initial rate, or any change in the rates, fares, charges, or*
16 *classifications, rules, or regulations which results in a de-*
17 *creased cost to the shipper may become effective upon filing*
18 *with the Commission. The term 'tariff' as used in this para-*
19 *graph shall include any amendment, supplement, or reissue.*

20 “(3) *No common carrier by water in foreign commerce*
21 *or conference of such carriers shall charge or demand or*
22 *collect or receive a greater or less or different compensation*
23 *for the transportation of property or for any service in con-*
24 *nection therewith than the rates and charges which are spec-*
25 *ified in its tariffs on file with the Commission and in effect*

1 at the time; nor shall any such carrier rebate, refund, or
2 remit in any manner or by any device any portion of the rates
3 or charges so specified, nor extend or deny to any person
4 any privilege or facility, except in accordance with such
5 tariffs. Nothing in this Act shall prevent the carriage, stor-
6 age, or handling of property free or at reduced rates, for the
7 United States, State, municipal, or foreign governments, or
8 for religious organizations or religious personnel, or for chari-
9 table purposes: Provided, however, That appropriate author-
10 ity therefor is set forth in a tariff or tariffs on file with the
11 Commission.

12 “(4) The Commission shall by regulations prescribe the
13 form and manner in which the tariffs required by this sec-
14 tion shall be filed; and the Commission is authorized to re-
15 ject any tariff filed with it which is not in conformity with
16 this section and with such regulations. Upon rejection by
17 the Commission, a tariff shall be void and its use unlawful.

18 “(5) Whoever violates any provision of this section shall
19 be liable to a penalty of not more than \$1,000 for each day
20 such violation continues, to be recovered by the United States
21 in a civil action.”

22 SEC. 6. Section 20, Shipping Act, 1916, is amended by
23 changing the period at the end thereof to a semicolon and
24 adding the following: “or to prevent the giving by any com-
25 mon carrier by water which is a party to a conference agree-

1 *ment approved pursuant to section 15 of this Act, or by any*
2 *other person subject to this Act, to, or the soliciting or receipt*
3 *by the conference or any person, firm, corporation, or agency*
4 *designated by the conference, of information for the purpose*
5 *of determining whether a shipper or consignee has committed*
6 *a breach of an agreement with the conference or its member*
7 *lines or of determining whether a conference member has*
8 *committed a breach of the conference agreement, or for the*
9 *purpose of compiling statistics of cargo movement, but the*
10 *use of such information for any other purpose prohibited by*
11 *this Act or any other Act shall be unlawful.”*

12 *SEC. 7. The Shipping Act, 1916, is hereby amended by*
13 *inserting a new section 43 reading as follows:*

14 *“SEC. 43. The Commission shall make such rules and*
15 *regulations as may be necessary to carry out the provisions*
16 *of this Act.”*

17 *SEC. 8. Section 16 First, Shipping Act, 1916 (39 Stat.*
18 *734; 46 U.S.C. 815), is hereby amended by deleting the*
19 *period at the end thereof and adding the following: “: Pro-*
20 *vided, That within thirty days after enactment of this Act, or*
21 *within thirty days after the effective date or the filing with*
22 *the Commission, whichever is later, of any conference freight*
23 *rate, rule, or regulation in the foreign commerce of the United*
24 *States, the Governor of any State, Commonwealth, or pos-*
25 *session of the United States may file a protest with the*

1 *Commission upon the ground that the rate, rule, or regulation*
2 *unjustly discriminates against that State, Commonwealth,*
3 *or possession of the United States, in which case the Commis-*
4 *sion shall issue an order to the conference to show cause why*
5 *the rate, rule, or regulation should not be set aside. Within*
6 *one hundred and twenty days from the date of the issuance*
7 *of such order, the Commission shall determine whether or*
8 *not such rate, rule, or regulation is unjustly discriminatory*
9 *and issue a final order either dismissing the protest, or setting*
10 *aside the rate, rule, or regulation.”*

11 *SEC. 9. Section 2 of the Act entitled “To Amend the*
12 *Shipping Act, 1916”, approved August 12, 1958 (72 Stat.*
13 *574), as amended by an Act approved June 29, 1960 (74*
14 *Stat. 253), and as amended by an Act approved June 30,*
15 *1961 (75 Stat. 195), is further amended by striking out*
16 *“September 15, 1961,” and inserting in lieu thereof “March*
17 *31, 1962”.*

18 *SEC. 10. Except for section 9 hereof which shall be effec-*
19 *tive immediately upon enactment, this Act shall be effective on*
20 *and after April 1, 1962.*

Amend the title so as to read: “An Act to amend the Shipping Act, 1916, as amended, to authorize ocean common carriers and conferences thereof serving the foreign commerce of the United States to enter into effective and fair dual rate contracts with shippers and consignees, and for other purposes.”

87TH CONGRESS
1ST SESSION

H. R. 6775

[Report No. 860]

AN ACT

To amend the Shipping Act, 1916, as amended,
to provide for the operation of steamship
conferences.

JUNE 13, 1961

Read twice and referred to the Committee on
Commerce

AUGUST 31, 1961

Reported with amendments

11. PASSED OVER the following bills:
- H. R. 6775, to provide for the operation of steamship conferences.
p. 17305
 - ~~H. R. 6141, to limit to cases involving the national security the prohibition on payment of retirement annuities to retired Federal employees.
p. 17305~~
 - ~~S. 1633, to provide for the establishment of a Department of Urban Affairs and Housing. p. 17309~~
12. LEGISLATIVE PROGRAM. Sen. Mansfield stated that S. 2180, to establish a U. S. Disarmament Agency for World Peace and Security, will be considered next, followed by consideration of the Mexican farm labor bill. p. 17414
- HOUSE
13. APPROPRIATIONS. Received the conference report on H. R. 7035, the Labor-HEW appropriation bill (H. Rept. 1154) (pp. 17429-31). The bill includes \$20,250,000 for the Office of Vocational Rehabilitation.
Conferees were granted until midnight Fri., Sept. 8, to file a conference report on H. R. 8302, the military construction appropriation bill. p. 17493
14. RICE. The Agriculture Committee reported without amendment H. R. 9013, to provide for the transfer of rice acreage history where a producer withdraws from the production of rice (H. Rept. 1150). p. 17495
15. CONSERVATION. The Agriculture Committee reported with amendments H. R. 8914, to permit producers on farms on which summer fallow is a normal practice to plant barley on land devoted to summer fallow during 1961 which is diverted from wheat under the 1962 Wheat Stabilization Program provided an overall reduction of 20% is made in corn, grain sorghums, and barley (H. Rept. 1149).
p. 17495
16. WHEAT. The Agriculture Committee reported with amendments H. R. 8842, to permit a wheat producer to withdraw from his stored excess the amount of wheat by which he fails to make his normal production on the reduced acreage allotment, less the acres voluntarily retired below the allotment (H. Rept. 1148).
p. 17495
17. SUPERGRADES. The Post Office and Civil Service Committee voted to report (but did not actually report) with amendments H. R. 7377, to increase the limitation on the number of supergrades, and on the number of research and development positions of scientists and engineers for which special rates of pay are authorized (p. D825). The committee was granted until midnight Thurs., Sept. 7, to file a report on this bill (p. 17423).
18. WATERFOWL. Disagreed to the Senate amendments and conferees were appointed on H. R. 7391, to promote the conservation of migratory waterfowl by the acquisition of wetlands and other essential waterfowl habitat. p. 17426
19. POSTAL RATES. The Post Office and Civil Service Committee reported with amendment H. R. 7927, to adjust postal rates (H. Rept. 1155). p. 17495

20. PERSONNEL. The Post Office and Civil Service Committee ordered favorably reported H. R. 8565, to permit certain Government employees to elect to receive compensation in accordance with section 401 of the Federal Employees Pay Act of 1945, in lieu of certain compensation at a saved rate. pp. D824-5
21. FOREIGN TRADE. The Post Office and Civil Service Committee ordered favorably reported H. R. 7791, to provide for the collection and publication of foreign commerce and trade statistics. p. D825
- Passed as reported H. R. 7692, to amend section 304 of the Tariff Act to provide that when articles, which are imported in containers that are now required to be marked to show in English the name of the country of origin of such articles, are repackaged in the U. S. and offered for sale, the new packages shall be marked to show the country from which the materials originally came. pp. 17427-9
- Agreed to without amendment H. Res. 403, to create a select committee to conduct an investigation and study of the administration, operation, and enforcement of the Export Control Act of 1949. pp. 17433-45
22. TRANSPORTATION. Agreed to the Senate amendment to H. R. 6732, to amend the Merchant Marine Act, 1936, as amended, to encourage the construction and maintenance of American-flag vessels built in American shipyards. This bill will now be sent to the President. p. 17446
23. PEACE CORPS. Rep. Dorn stated that the proposal to establish a Peace Corps is wrought with potential danger to U. S. prestige by sending inadequately trained and indoctrinated personnel into foreign countries. pp. 17446-7
- The Rules Committee reported a resolution for consideration of H. R. 7500, to provide for a Peace Corps to help the peoples of interested countries and areas in meeting their needs for skilled manpower. p. 17495
24. ELECTRIFICATION. Rep. Saylor criticized what he termed "an unholy alliance between the fanatical public power zealots and the Bureau of Reclamation who are using the reclamation program for the promotion of subsidized Government power." pp. 17450-7
- Rep. Ashbrook said the Government's "getting deeper" into the electric power business is a "serious and dangerous trend which can and must be reversed." pp. 17461-3
25. LEGISLATIVE PROGRAM. Rep. Albert announced that the Labor-HEW and the military construction appropriations conference reports will be considered on Monday; the public works appropriation bill on Tuesday; the conference report on Atomic Energy Commission appropriations authorization, the Peace Corps bill, H. R. 6360, relating to an additional Assistant Secretary of Commerce, and the supplemental appropriation bill for 1962, on Wednesday and the balance of the week. pp. 17481-2
26. ADJOURNED until noon Monday, September 11.

ITEMS IN APPENDIX

27. FARM PROGRAM. Extension of remarks of Sen. Wiley inserting an article in which a Wisc. dairyman reports on a tour of farm areas in Soviet countries. pp. A7035-6
- Extension of remarks of Rep. Alexander inserting Under Secretary Murphy's address before the annual meeting of the North Carolina Feeder Manufacturers Association, Virginia Beach, Va. pp. A7061-3

The Post Office and Civil Service Committee reported without amendment H. R. 8565, to permit certain Government employees to elect to receive compensation in accordance with section 401 of the Federal Employees Pay Act of 1945, in lieu of certain compensation at a saved rate (H. Rept. 1168). p. 18028

The Subcommittee on Executive and Legislative Reorganization of the Government Operations Committee voted to report to the full committee H. R. 8798, relating to travel expenses of certain civilian officers and employees. p. D840

6. FARM LABOR. Rep. Coad objected to sending H. R. 2010, to extend and amend the Mexican farm labor program, to conference. p. 17950

7. FOREIGN AFFAIRS. Conferees were appointed on H. R. 8666, to provide for the improvement and strengthening of the international relations of the U. S. by promoting better mutual understanding among the peoples of the world through educational and cultural exchanges. p. 17950

The Foreign Affairs Committee reported without amendment H. R. 9118, to establish a U. S. Arms Control Agency (H. Rept. 1165). p. 18028

8. FEED GRAINS. Rep. Fountain discussed the feed grains program, and said, "I am glad that I supported the feed grain program." pp. 18024-5

Rep. Smith, Iowa, discussed the feed grains program, saying, "When the administration early this year proposed the 1961 emergency feed grain program, its objective was to first improve farm income and second, to reduce Government costs. The September crop report clearly indicates that these two objectives have been fully achieved." pp. 18025-6

SENATE

9. PERSONNEL. The Post Office and Civil Service Committee reported with amendments S. 1732, to increase the limitation on the number of supergrade and high-level scientific positions (S. Rept. 977). p. 17820

Passed without amendment H. R. 6141, to limit to cases involving the national security the prohibition on payment of annuities and retired pay to officers and employees of the Federal Government. This bill will now be sent to the President. pp. 17935-46

10. YOUTH CONSERVATION CORPS. The Labor and Public Welfare Committee reported with amendments S. 404, to authorize the establishment of a Youth Conservation Corps of young men to assist in the conservation of natural resources (S. Rept. 976). pp. 17819-20

11. WATER COMPACTS. The Public Works Committee reported with amendment S. 856, to grant the consent of Congress to the Delaware River Basin Compact (S. Rept. 985). p. 17819

12. TRANSPORTATION. ~~The Commerce Committee reported without amendment S. 2524, to extend until March 31, 1962, the authority for dual-rate contract agreements by steamship conferences (S. Rept. 979). p. 17819~~

Began debate on H. R. 6775, to extend indefinitely the authority for dual-rate contract agreements by steamship conferences. pp. 17946-8

13. RECLAMATION. The Interior and Insular Affairs Committee reported with amendments S. 1060, to authorize construction of the Oroville-Tonasket unit of the Okanogan-Similkameen division, Chief Joseph Dam project, Wash. (S. Rept. 973). p. 17819

The Irrigation and Reclamation Subcommittee of the Interior and Insular Affairs Committee approved for full committee consideration S. 2008, relating to the construction and operation of the Spokane Valley project. p. D839

14. MINERALS. The Interior and Insular Affairs Committee reported without amendment H. R. 2924, to repeal an act extending the time in which to file adverse claims and institute adverse suits against mineral entries in Alaska (S. Rept. 982). p. 17819
15. FORESTRY. The Interior and Insular Affairs Committee reported with amendments S. 1760, to provide for the establishment of the Great Basin National Park, Nev. (the bill as introduced provided for the transfer of national forest lands to the proposed park)(S. Rept. 983). p. 17819
16. EDUCATION. Passed with amendments S. 2393, to extend for 2 years the authority for Federal assistance for the construction and operation of schools in federally impacted areas and the National Defense Education Act (pp. 17827-32, 17834-5, 17837, 17844-910). By a vote of 80 to 7, agreed to an amendment by Sen. Monroney to extend the programs for a 2-year period (pp. 17879-910). By a vote of 40 to 45, rejected an amendment by Sen. Morse (for himself and Sen. Javits) to limit to a 1-year period assistance to schools in federally impacted areas (pp. 17900-01).
17. LABOR-HEW APPROPRIATION BILL FOR 1962. Agreed to the conference report and acted on amendments in disagreement on this bill, H. R. 7035. The bill will now be sent to the President. pp. 17910-6
18. FEED GRAINS. Sen. Keating referred to the latest report on probable feed grain production and contended that the feed grain program has "failed" since "Production has not been materially cut." p. 17825
Sen. Proxmire defended the feed grain program and stated that "the value to feed grain producers and the U. S. taxpayer of the 1961 feed grain program, in contrast to the program which it replaced, was again demonstrated by the September crop report issued yesterday by the U. S. Department of Agriculture." pp. 17918-9
Sen. Humphrey defended the program as having "saved the Government of the United States millions of dollars" and stated that "Had there been no 1961 feed grain program, corn would be about ready to harvest from 71.5 million acres - as in 1960 - and grain sorghum would have been approximately 15.5 million." p. 17934
19. ELECTRIFICATION. Sen. Moss inserted an article on the controversy of public vs private construction of transmission lines between the dams of the Colorado River storage project, "Private Firms Score Big Point in Power Transmission Battle." pp. 17833-4
20. LEGISLATIVE PROGRAM. Sen. Mansfield announced that the foreign aid, public works, and supplemental appropriations bills will be considered as soon as they are reported from committee. pp. 17835-6

ITEMS IN APPENDIX

21. LIVESTOCK. Extension of remarks of Rep. Poage discussing the cattle branding, identification and inspection program in Texas. pp. A7146-7

Service: 36 years 1 month.

Description of offense: Charged by Post Office Department of embezzling \$165 collected for parcel-post mailing matter.

Date of offense: August 13, 1954.

Date of final separation: September 13, 1954.

Reason for final separation: Removed.

Sentence of court (as reported by agency):

Date: October 19, 1954.

Prison: Suspended.

Years of probation: 3.

Present value of annuity denied by Public Law 769: \$35,000.

Approximate refund due: Paid, \$5,833.11.

Annuity: Monthly, \$179; accrued to February 28, 1961, \$12,989.

H.R. 4601 would remove bar to payment.

Mr. CLARK. Mr. President, will the Senator from Delaware yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. CLARK. I assume all these cases are referred to in the committee report.

Mr. WILLIAMS of Delaware. Most of them are, but your committee report far from covers all those formerly convicted public officials whose eligibility for retirement benefits will be restored under this bill. I ask unanimous consent to have printed at this point in the RECORD a letter from the Civil Service Commission explaining how many of those former employees were convicted in the courts for violations of their public trust, but who have as yet not applied for their pensions. These men would be eligible upon the passage of this bill to ask for their full retirement benefits, notwithstanding their previous convictions.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 16, 1959.

Hon. JOHN J. WILLIAMS,
U.S. Senate.

DEAR SENATOR WILLIAMS: There is before me your letter of March 27 regarding application of S. 91, if enacted, to certain specific cases.

This bill is intended to and will amend the existing bar in Public Law 769, 83d Congress, against annuity awards by limiting its application to crimes or actions involving the national security. It will not affect the Civil Service Retirement Act in any other way. For those persons whose annuity payments are barred because of conviction for embezzlement of Government funds or having accepted bribes or kickbacks while in public office, enactment of S. 91 will restore their annuity rights.

Mr. WILLIAMS of Delaware. Mr. President, I will omit the part of their letter in which they name several formerly convicted public officials all of whom would be eligible for retirement benefits under the bill before us. The bill S. 91 to which they refer is identical to the bill before us today.

These persons are not on the committee list, nor are scores of other former public officials who violated their public trust. Only those who have applied for their retirement benefits, are on the list of the committee report.

I cite one other example, the former manager of the Alaska Railroad Company. He was indicted for certain improper activities in connection with his official duties.

Rather than to stand trial, that man skipped the country and went to South America. When the Government threatened to cancel his passport, he renounced his U.S. citizenship rather than come back and stand trial for the offense which he had committed in the course of his official duties.

The existing law provides for the denial of retirement benefits not only for those convicted in the Federal courts, but also for any public official who skipped out of the country to avoid standing trial on the charges involving his official duties.

This bill will restore his eligibility. I ask unanimous consent that section 405 of the code, which denied this man his retirement benefits, be printed at this point in the RECORD.

There being no objection, section 405 of the code was ordered to be printed in the RECORD, as follows:

FORFEITURE OF ANNUITIES OF PERSONS REMAINING OUTSIDE UNITED STATES TO AVOID PROSECUTION

SEC. 405. The Act entitled "An Act to prohibit payment of annuities to officers and employees of the United States convicted of certain offenses, and for other purposes", approved September 1, 1954 (58 Stat. 1142), is amended by adding at the end of section 2 thereof a new subsection as follows:

"(c) In any case in which, after the date of enactment of this subsection, any person under indictment for any offense within the purview of the first section of this Act willfully remains outside the United States, its Territories, and possessions, for a period in excess of one year with knowledge of such indictment, no annuity or retired pay shall be paid, for any period subsequent to the end of such one-year period to such person or to the survivor or beneficiary of such person, on the basis of the service of such person, as an officer or employee of the Government unless and until a nolle prosequi to the entire indictment is entered upon the record or such person returns and thereafter the indictment is dismissed or after trial by court the accused is found not guilty of the offense, or offenses charged in the indictment."

Mr. WILLIAMS of Delaware. The bill would repeal that section and will reestablish the eligibility of this Government employee who renounced his U.S. citizenship rather than come back to this country and stand trial for having abused his public office.

The committee says, through the bill, "Let us give him full retirement benefits, just as though he had been a loyal public servant." I shall not support any such bill. I think it is a sad day when we have in power an administration which is issuing high-sounding codes of ethics, while at the same time it asks Congress to pass a law to restore full retirement benefits to every crook or scoundrel who has ever worked for the U.S. Government, no matter how despicable the offense of which he has been convicted.

If we pass the bill in its present form, the only crime will be getting caught.

The bill may have been reported by the committee three times but it was also defeated twice. I do not care whether it was reported 3 times or 10 times. There may be enough votes on

the New Frontier to pass this bill but I want the RECORD to show that there is at least one Senator who will vote against it.

Here is one Senator who does not believe it is necessary that a public official be incarcerated in a Federal penitentiary to keep him off the Federal payroll.

I am not speaking of petty crimes committed by the ordinary employees of the Post Office Department or other Government departments. I am speaking of high public officials who accepted bribes for decisions. Many such employees were top officials. Many were directors of the Internal Revenue Service in their districts. Some were top officials in the Treasury Department right here in Washington. Others held positions in the White House itself. Yet now we are asked to say that the offenses which they committed were not too bad; and that these crooked officials should be entitled to their full retirement benefits.

I shall vote against the bill.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 6141) was ordered to a third reading, read the third time, and passed.

Mr. CLARK. Mr. President, I move that the Senate reconsider the vote by which the bill was passed.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CLARK. Mr. President, I did not undertake to reply to the Senator from Delaware while the bill was pending, because almost everything he said, he said 2 years ago.

I regret that, in my judgment, what he said 2 years ago and what he said today is substantially inaccurate.

Mr. President, I ask unanimous consent that a synopsis of the case of the former executive of the Alaska Railroad, prepared by the Civil Service Commission last year, may be printed at this point in the RECORD.

Mr. WILLIAMS of Delaware. Mr. President, reserving the right to object—and I shall not object—I challenge the Senator from Pennsylvania to cite one specific point I made which was inaccurate.

Mr. CLARK. I do not choose to do so.

Mr. WILLIAMS of Delaware. The Senator from Pennsylvania cannot challenge the accuracy of a single point I made and he knows it.

My analysis of this bill and the cases cited are accurate. I challenge the Senator from Pennsylvania to point out anything I said which he thinks is inaccurate; otherwise, let him not stand there and say it is inaccurate. I have named cases. I have placed the sections of the law in the RECORD. I had something to do with the passage of the law denying these men retirement benefits. I had something to do with exposing the

corruption of some of those public officials. Some of them were top tax collectors. Every one of them—every crooked public official who was convicted in the last 10 years, under the Truman administration or under the Eisenhower administration—would have his retirement benefits restored to him under the bill, and restored retroactively. The Senator from Pennsylvania cannot deny it. For the past 3 years the Senator from Pennsylvania has been trying to restore the retirement benefits of these crooked public officials.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Pennsylvania?

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

CASE NO. 2

Date of birth: January 1, 1902.

Training and experience: mechanical engineer; employed about 24 years, in various positions, by the Atchison, Topeka & Santa Fe Railroad.

Federal service:

Agency, position, date:

U.S. Army, colonel (last rank) from October 10, 1941 to November 30, 1945.

Alaska Railroad, Assistant General Manager, from November 21, 1945 to December 31, 1945.

Alaska Railroad, General Manager, from January 1, 1946 to October 21, 1953.

The dates of military service were not verified, but official correspondence indicates that they are substantially correct and that he was released from the Army to accept the position of General Manager, Alaska Railroad.

Leave without pay from August 7, 1953, was authorized and resignation as General Manager accepted by the Secretary of the Interior, effective October 21, 1953.

INDICTMENT

On September 15, 1953, a grand jury in Alaska returned a sealed indictment which was opened in March 1955.

The indictment charged, in effect, that the defendant acted as an officer and agent of the United States for the transaction of business with a corporation in the profits and contracts of which he was financially interested by reason of its relationship with a company in which defendant was directly interested through ownership of stock. The indictment is still pending.

It appears that the defendant went to South America in June or July 1953 and that he is now a naturalized citizen of Colombia. Application for naturalization was made on May 6, 1955, and granted on October 6, 1955. Prior to October 6, 1955, Colombia was informed of the indictment.

AWARDS

Legion of Merit.

Department of Interior Distinguished Award for outstanding accomplishment in the successful administration of a \$70 million program for the rehabilitation of the Alaskan Railroad.

Mr. CLARK. Mr. President, I further ask unanimous consent that an analysis of the purpose and background of the bill and a summary of the bill, made by the staff of the Civil Service Commission, be printed at this point in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

SENATE POST OFFICE AND CIVIL SERVICE COMMITTEE ANALYSIS OF H.R. 6141, "AN ACT TO AMEND THE ACT OF SEPTEMBER 1, 1954, IN ORDER TO LIMIT TO CASES INVOLVING THE NATIONAL SECURITY THE PROHIBITION ON PAYMENT OF ANNUITIES AND RETIRED PAY TO OFFICERS AND EMPLOYEES OF THE UNITED STATES"

PURPOSE

This measure has two major objectives as follows:

First, it continues, clarifies, and strengthens the existing statutory prohibition against the payment of a Federal retirement benefit to any person who has committed an offense against the national security or who refuses to testify before a duly constituted judicial or congressional proceeding in a matter relating to the national security.

Second, it corrects certain inequities resulting from existing law which has denied retirement benefits to individuals and innocent survivors because of offenses in no way related to the national security.

BACKGROUND

This measure has a lengthy background. The Eisenhower administration submitted draft legislation to the 86th Congress which was introduced in the Senate (S. 91) on January 9, 1959 and in the House (H.R. 4601) on February 17, 1959. The later bill passed the House and was referred to the Senate on April 14, 1959. The bill was considered in the Senate on May 12, 1960, and together with S. 91 it was recommitted to this committee. On June 10, 1960, the bill (H.R. 4601) was again favorably reported to the Senate. It received no further consideration in the 86th Congress.

Shortly after the 87th Congress convened, a number of bills identical to H.R. 4601 of the 86th Congress were introduced in the House. None was introduced in the Senate.

The House held hearings on H.R. 6141 and related bills on June 13, 1961. On June 15, the bill was favorably reported; and on July 12 it passed the House without a word of opposition.

Hearings on the measure were held by the Retirement Subcommittee of the Senate Committee on Post Office and Civil Service on July 26, 1961.

Favorable testimony was received from the Bureau of the Budget, the Civil Service Commission, the Post Office Department, the Department of Defense, and representatives of a large number of employee organizations. There was no adverse testimony from any source.

Senator WILLIAMS of Delaware was invited in writing to appear at the hearing but did not do so. He did submit a letter for the record. An offer to reconvene the hearing at a day agreeable to him was declined by Senator WILLIAMS on the basis that his letter "clearly set forth his position."

SUMMARY

Last year's report on H.R. 4601 contains as exhibit 4 a summary of 189 claims for a civilian annuity denied under existing law. Since that time, 24 additional claims have been denied, making a total of 213. Of this number, 28 have since been allowed by virtue of a Presidential pardon, 3 have been allowed by reason of Court of Claims decisions, 5 have been allowed as the result of a reappraisal of evidence—thus a total of 36 of those originally denied have since been allowed leaving a residue of 177 still denied.

If this bill is enacted, 12 cases would continue to be denied and the remainder would be allowed.

The Department of Defense submitted a table listing some 51 cases in which military retirement has been denied by reason of existing law. The total which might arise in the future cannot be determined without

a search of records on a worldwide basis. The Department takes the position that the present law is unduly harsh, has a bad effect on morale, and should be modified as proposed.

AMENDMENT TO SHIPPING ACT OF 1916

Mr. CLARK. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 842, H.R. 6775.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Pennsylvania.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, with an amendment to strike out all after the enacting clause and insert:

That paragraph Third of section 14, Shipping Act, 1916, is amended by inserting the word "unjustly" before the word "discriminating".

SEC. 2. The Shipping Act, 1916, is amended by adding after section 14a a new section to read as follows:

"SEC. 14b. Notwithstanding any other provision of this Act, on application the Federal Maritime Commission (hereinafter 'Commission') shall, after notice, permit the use by any common carrier or conference of such carriers in foreign commerce of any contract, amendment, or modification thereof, which is available to all shippers and consignees on equal terms and conditions, which provides lower rates to a shipper or consignee who agrees to give all or any fixed portion of his patronage to such carrier or conference of carriers unless the Commission finds that the contract, amendment, or modification thereof, will be detrimental to the commerce of the United States or contrary to the public interest, or unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, and provided the contract, amendment, or modification thereof, expressly (1) permits prompt release of the contract shipper from the contract with respect to any shipment or shipments for which the contracting carrier or conference of carriers cannot provide as much space as the contract shipper shall require on reasonable notice; (2) provides that whenever a tariff rate for the carriage of goods under the contract becomes effective, insofar as it is under the control of the carrier or conference of carriers, it shall not be increased before a reasonable period, but in no case less than ninety days, except in case of war or other force majeure; (3) covers only those goods of the contract shipper as to the shipment of which he has the legal right at the time of shipment to select the carrier; *Provided, however,* That it shall be deemed a breach of the contract if, before the time of shipment and with the intent to avoid his obligation under the contract, the contract shipper divests himself of the legal right to select the carrier and the shipment is carried by a carrier which is not a party to the contract; (4) limits damages recoverable for breach by either party to actual damages to be determined after breach in

accordance with the principles of contract law: *Provided, however*, That the contract may specify that in the case of a breach by a contract shippers the damages may be an amount not exceeding the freight charges computed at the contract rate on the particular shipment, less the cost of handling; (5) permits the contract shipper to terminate at any time without penalty upon ninety days' notice; (6) provides for a spread between ordinary rates and rates charged contract shippers which the Commission finds to be reasonable in all the circumstances but which spread shall in no event be more than 15 per centum of the ordinary rates; (7) excludes cargo of the contract shipper which is loaded in bulk without mark or count; and (8) contains such other provisions not inconsistent herewith as the Commission shall require or permit. The Commission shall withdraw permission which it has granted under the authority contained in this section for the use of any contract if it finds, after notice and hearing, that the use of such contract is detrimental to the commerce of the United States or contrary to the public interest, or is unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors. The carrier or conference of carriers may on ninety days' notice terminate without penalty the contract rate system herein authorized, in whole or with respect to any commodity: *Provided, however*, That after such termination the carrier or conference of carriers may not reinstitute such contract rate system or part thereof so terminated without prior permission by the Commission in accordance with the provisions of this section. As used in this section, the term 'contract shipper' means a person other than a carrier or conference of carriers who is a party to a contract the use of which may be permitted under this section."

SEC. 3. Section 15, Shipping Act, 1916, is amended to read as follows:

"SEC. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements.

"The Commission shall by order, after notice and hearing, disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between conferences of carriers

serving different trades that would otherwise be naturally competitive unless each conference retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

"The Commission shall disapprove any conference agreement, after notice and hearing, on a finding of inadequate policing and enforcing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

"Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof including changes in special rates and charges covered by section 14b of this Act which do not involve a change in the spread between such rates and charges and the rates and charges applicable to non-contract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, shall be permitted to take effect without prior approval upon compliance with the filing requirements of section 18(b) hereof and with the provisions of any regulations the Commission may adopt.

"Every agreement, modification, or cancellation lawful under this section, or permitted under section 14b, shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', and amendments and Acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', and amendments and Acts supplementary thereto.

"Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues to be recovered by the United States in a civil action."

SEC. 4. Notwithstanding the provisions of section 14b and 15, Shipping Act, 1916, as amended by this Act, all existing agreements which are lawful under the Shipping Act, 1916, immediately prior to the enactment of this Act, shall remain lawful unless disapproved, canceled, or modified by the Commission pursuant to the provisions of the Shipping Act, 1916, as amended by this Act: *Provided, however*, That all such existing agreements which are rendered unlawful by the provisions of such Act as hereby amended must be amended to comply with the provisions of such Act as hereby amended, and if such amendments are filed for approval within six months after the enactment of this Act, such agreements so amended shall be lawful unless and until disapproved, canceled, or modified by the Commission, but if not so amended and filed within said six-month period, such agreements, if thereafter found to be in violation of the Act, as hereby amended, may be declared unlawful by the Commission from the expiration of said six-month period.

SEC. 5. Section 18, Shipping Act, 1916, is hereby amended as follows:

(a) Insert "(a)" immediately after the section number "18".

(b) Add the following subsection 18(b):

"(b)(1) From and after ninety days following enactment hereof every common carrier by water in foreign commerce and every conference of such carriers shall file with the Commission and keep open to public inspection tariffs showing all the rates, fares, and charges of such carrier or conference of carriers for transportation to and from United States ports and foreign ports between all points on its own route and on any through route which has been established. Such tariffs shall plainly show the places between which freight will be carried, and shall contain the classification of freight in force, and shall also state separately such terminal or other charge, privilege, or facility under the control of the carrier or conference of carriers which is granted or allowed, and any rules or regulations which in anywise change, effect, or determine any part or the aggregate of such aforesaid rates, or charges, and shall include specimens of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement. Copies of such tariffs shall be made available to any person and a reasonable charge may be made therefor. The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count.

(2) No change shall be made in the rates, fares, charges, classifications, rules, or regulations, which results in an increase in cost to the shipper, except by the filing, as aforesaid, of a new tariff or tariffs which shall become effective not earlier than thirty days after the date of filing thereof with the Commission, and each such tariff or tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the time when the rates, fares, charges, classifications, rules, or regulations as changed are to become effective: *Provided, however*, That the Commission may, in its discretion and for good cause, allow such changes upon less than the period of thirty days herein specified. Any new or initial rate, or any change in the rates, fares, charges, or classifications, rules, or regulations which results in a decreased cost to the shipper may become effective upon filing with the Commission. The term 'tariff' as used in this paragraph shall include any amendment, supplement, or reissue.

"(3) No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and in effect at the time; nor shall any such carrier rebate, refund, or remit in any manner or by any device any portion of the rates or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs. Nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, municipal, or foreign governments, or for religious organizations or religious personnel, or for charitable purposes: *Provided, however*, That appropriate authority therefor is set forth in a tariff or tariffs on file with the Commission.

"(4) The Commission shall by regulations prescribe the form and manner in which the tariffs required by this section shall be filed; and the Commission is authorized to reject any tariff filed with it which is not in conformity with this section and with such regulations. Upon rejection by the Commission, a tariff shall be void and its use unlawful.

"(5) Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action."

SEC. 6. Section 20, Shipping Act, 1916, is amended by changing the period at the end thereof to a semicolon and adding the following: "or to prevent the giving by any common carrier by water which is a party to a conference agreement approved pursuant to section 15 of this Act, or by any other person subject to this Act, to, or the soliciting or receipt by the conference or any person, firm, corporation, or agency designated by the conference, of information for the purpose of determining whether a shipper or consignee has committed a breach of an agreement with the conference or its member lines or of determining whether a conference member has committed a breach of the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act shall be unlawful."

SEC. 7. The Shipping Act, 1916, is hereby amended by inserting a new section 43 reading as follows:

"SEC. 43. The Commission shall make such rules and regulations as may be necessary to carry out the provisions of this Act."

SEC. 8. Section 16 First, Shipping Act, 1916 (39 Stat. 734; 46 U.S.C. 815), is hereby amended by deleting the period at the end thereof and adding the following: "Provided, That within thirty days after enactment of this Act, or within thirty days after the effective date or the filing with the Commission, whichever is later, of any conference freight rate, rule, or regulation in the foreign commerce of the United States, the Governor of any State, Commonwealth, or possession of the United States may file a protest with the Commission upon the ground that the rate, rule, or regulation unjustly discriminates against that State, Commonwealth, or possession of the United States, in which case the Commission shall issue an order to the conference to show cause why the rate, rule, or regulation should not be set aside. Within one hundred and twenty days from the date of the issuance of such order, the Commission shall determine whether or not such rate, rule, or regulation is unjustly discriminatory and issue a final order either dismissing the protest, or setting aside the rate, rule, or regulation."

SEC. 9. Section 2 of the Act entitled "To Amend the Shipping Act, 1916", approved August 12, 1958 (72 Stat. 574), as amended by an Act approved June 29, 1960 (74 Stat. 253), and as amended by an Act approved June 30, 1961 (75 Stat. 195), is further amended by striking out "September 15, 1961," and inserting in lieu thereof "March 31, 1962".

SEC. 10. Except for section 9 hereof which shall be effective immediately upon enactment, this Act shall be effective on and after April 1, 1962.

MESSAGE FROM THE HOUSE—ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its

reading clerks, announced that the Speaker pro tempore had affixed his signature to the following enrolled bills and joint resolutions, and they were signed by the Vice President:

S. 200. An act to amend the act entitled "An act relative to employment of certain adult Indians on or near Indian reservations," approved August 3, 1956;

S. 279. An act to provide Federal assistance for projects which will demonstrate or develop techniques and practices leading to a solution of the Nation's juvenile delinquency control problems;

S. 1528. An act to increase the relief or retirement compensation of certain former members of the Metropolitan Police force, the Fire Department of the District of Columbia, the U.S. Park Police force, the White House Police force, and the U.S. Secret Service; and of widows and children of certain deceased former officers of such forces, department, or service;

S. 1529. An act, to amend the act entitled "An act to regulate the height of buildings in the District of Columbia," approved June 1, 1910, as amended;

S. 1719. An act to amend title 23 of the United States Code with respect to Indian reservation roads;

S. 1762. An act to regulate the practice of physical therapy in the District of Columbia;

S. 1768. An act to provide for the restoration to Indian tribes of unclaimed per capita and other individual payments of tribal trust funds;

S. 1807. An act to authorize the disposition of land no longer needed for the Chilocco Indian Industrial School at Chilocco, Okla.;

S. 2241. An act to donate to the Jicarilla Apache Tribe of the Jicarilla Reservation, N. Mex., approximately 391.43 acres of federally owned land;

H.R. 176. An act to amend section 331 of title 28 of the United States Code so as to provide for representation on the Judicial Conference of the United States;

H.R. 2816. An act for the relief of CWO James M. Cook;

H.R. 2883. An act to amend title 28, entitled "Judiciary and Judicial Procedure," of the United States Code to provide for the defense of suits against Federal employees arising out of their operation of motor vehicles in the scope of their employment, and for other purposes;

H.R. 3606. An act for the relief of William C. Winter, Jr., lieutenant colonel, U.S. Air Force (Medical Corps);

H.R. 3863. An act for the relief of Woody W. Hackney of Fort Worth, Tex.;

H.R. 4369. An act for the relief of Henry James Taylor;

H.R. 4458. An act to authorize the Secretary of the Interior to replace lateral pipelines, line discharge pipelines, and to do other work he determines to be required for the Avondale, Dalton Gardens, and Hayden Lake Irrigation Districts in the State of Idaho;

H.R. 4669. An act to amend the law relating to gambling in the District of Columbia;

H.R. 5182. An act for the relief of Charles P. Redick;

H.R. 5559. An act for the relief of Ralph E. Swift and his wife, Sally Swift;

H.R. 6667. An act to amend the act of August 16, 1957, relating to microfilming of papers of Presidents of the United States, to remove certain liabilities of the United States with respect to such activities;

H.R. 6996. An act for the relief of Harry Weinstein;

H.R. 7264. An act for the relief of M. C. Pitts;

H.R. 7447. An act to amend the Strategic and Critical Materials Stockpiling Act to provide for the immediate disposition of certain waterfowl feathers and down;

H.J. Res. 109. Joint resolution designating the 17th day of December 1961 as "Wright Brothers Day"; and

H.J. Res. 499. Joint resolution authorizing a celebration of the American patent system.

ADJOURNMENT TO 11 A.M. TOMORROW

Mr. CLARK. Mr. President, I move, under the order heretofore entered, that the Senate adjourn until 11 o'clock tomorrow morning.

The motion was agreed to; and (at 6 o'clock and 57 minutes p.m.) the Senate adjourned, under the order previously entered, until tomorrow, Wednesday, September 13, 1961, at 11 o'clock a.m.

NOMINATIONS

Executive nominations received by the Senate September 12, 1961:

U.S. ATTORNEYS

William Medford, of North Carolina, to be U.S. attorney for the western district of North Carolina for the term of 4 years, vice James M. Bailey, Jr.

William H. Murdock, of North Carolina, to be U.S. attorney for the middle district of North Carolina for the term of 4 years, vice James E. Holshouser, resigned.

IN THE AIR FORCE

Maj. Gen. William H. Blanchard, 1445A, Regular Air Force, to be assigned to positions of importance and responsibility designated by the President in the rank of lieutenant general, under the provisions of section 8066, title 10 of the United States Code.

The following-named officers for temporary appointment in the U.S. Air Force under the provisions of chapter 839, title 10 of the United States Code:

To be brigadier general

Col. William B. Campbell, 2000A, Regular Air Force.

Col. Richard O. Hunziker 4164A, Regular Air Force.

Col. Larry A. Smith, 19176A, Regular Air Force, Medical.

Lt. Gen. Robert W. Burns, 527A, Regular Air Force, to be senior Air Force member, military staff committee, United Nations, under the provisions of section 711, title 10 of the United States Code.

Lt. Gen. Roscoe C. Wilson, 360A (major general, Regular Air Force), U.S. Air Force, to be placed on the retired list in the grade of lieutenant general, under the provisions of section 8962, title 10 of the United States Code.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE
(For information only;
should not be quoted
or cited).

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HIGHLIGHTS: House Rules Committee reported measure to send Mexican farm labor bill to conference. Senate committee reported foreign aid appropriation bill. Both Houses agreed to conference report on State-Justice appropriation bill. House agreed to conference report on saline water conversion bill. House passed public works appropriation bill. House debated Peace Corps bill.

HOUSE

- 1. SALINE WATER.** Agreed to the conference report on H. R. 7916, to expand and extend the saline water conversion program being conducted by the Secretary of the Interior. This bill will now be sent to the President. pp. 18050-1
- 2. FARM LABOR.** The Rules Committee reported a resolution to send H. R. 2010, to extend the Mexican farm labor program, to conference. pp. 18036, 18085
- 3. APPROPRIATIONS.** Acted on amendment in disagreement on H. R. 8302, the military construction appropriation bill. p. 18032
By a vote of 377 to 31, passed with amendments H. R. 9076, the public works appropriation bill. Earlier rejected, 182 to 224, a motion to recommit. pp. 18034-5
- 4. ATOMIC ENERGY.** By a vote of 155 to 251, rejected the conference report on H. R. 7576, to authorize appropriations for AEC. Agreed to a motion that the House insist on its disagreement to the Senate amendment. pp. 18036-44
- 5. SMALL BUSINESS.** Received the conference report on H. R. 8762, to amend the Small Business Act to increase the amount available for regular business loans

thereunder (H. Rept. 1180). pp. 18055-7

6. FOREIGN TRADE. Passed as reported S. 2325, to permit the Export-Import Bank to issue guarantees and insurance where private enterprise will not issue them. pp. 18057-9

The "Daily Digest" states that the Ways and Means Committee "Met in executive session and instructed the chairman to introduce a clean bill to supersede H. R. 8691, to amend the Tariff Act of 1930 and certain related laws to provide for the restatement of the tariff classification provisions. The committee will meet Thursday, September 14, in executive session, to consider ordering the clean bill (H. R. 9189) reported." p. D846

7. PEACE CORPS. Began debate on H. R. 7500, to establish on a permanent basis the Peace Corps. pp. 18059-76

8. LOBBYING. Received the quarterly report on lobbying for the first calendar quarter of 1961. pp. 18087-117

SENATE

9. APPROPRIATIONS. The Appropriations Committee reported with amendments H. R. 9033, the foreign aid appropriation bill for 1962 (S. Rept. 991), and H. R. 8072 the D. C. appropriation bill for 1962 (S. Rept. 993). p. 18119

Both Houses agreed to the conference report on H. R. 7371, the State-Justice appropriation bill for 1962, and acted on amendments in disagreement. This bill will now be sent to the President. pp. 18032-4, 18199-201

10. TRANSPORTATION. Debated H. R. 6775, to continue the authority for dual rate contracts by steamship conferences. pp. 18128-34, 18156-99

11. CORN. Sen. Miller stated that there has been "serious underestimates of corn production coming from the Department of Agriculture," and inserted an article, "See Corn High of 73 Bushels," predicting that "Iowa farmers are going to top-ple a trio of significant corn and soybean marks this fall." pp. 18143-4

12. DAIRY PRODUCTS. Sen. Miller inserted an editorial stating that "there was 29 percent more surplus of dairy products on July 31 of this year than as of 1 year ago," and contending that "It is economic folly to raise price supports to levels that stimulate excessive production of commodities for which there is no real consumer demand at the higher price." p. 18143

13. PEANUT RESEARCH. Sen. Talmadge inserted an article commending Sen. Russell for his efforts in the establishment of a National Peanut Research Center in Dawson, Ga. pp. 18145-6

14. FORESTRY; PERSONNEL. Sen. Thurmond inserted an article stating that Don Caron, a Forest Service District Ranger in the Okanogan Forest, Wash., "submitted his resignation after the Portland regional office, supported by the local administration of the Okanogan Forest, directed him to discontinue writing educational articles against communism," and his letter to Forest Service Chief McArdle asking "by what authority the regional forester has demanded that Mr. Caron discontinue this activity." pp. 18202-4

15. MANPOWER TRAINING. Sen. Clark expressed hope that reports that the House will not act this session on the proposed Manpower Development and Training Act "are inaccurate and that the House of Representatives will still find time to act on this important measure," and inserted an article supporting the bill and a series of reports by the Bureau of Labor Statistics summarizing European

Congress. He was the only Postmaster General in the Cabinet of Jefferson Davis.

But there is a sad chapter in his later life. After the war Texas sent Mr. Regan back to Congress and he became chairman of the Committee on Post Offices and Post Roads. As Mr. Crigler writes, "He tried in vain to do the same thing for the U.S. Post Office Department that he did in such a fine way for the Confederacy."

NATIONAL SHRINE TO UNION VETERANS OF THE CIVIL WAR—RESOLUTION OF LADIES OF THE GAR

Mr. HICKEY. Mr. President, I ask unanimous consent to have printed in the RECORD a resolution adopted by the Ladies of the Grand Army of the Republic in their recent convention in Indianapolis, Ind.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

DESCENDANTS OF UNION VETERANS OF THE CIVIL WAR

(Memorializing the 87th Congress relative to legislation for the erection of a National Memorial Building in the Capital of the United States of America for which those patriots laid down their lives 100 years ago in the greatest battle ever fought)

Whereas the descendants of the veterans of the Civil War desire to call particular attention to our elected Members of Congress; to the fact that today they would not be seated in this 87th Congress of the United States of America, had not our boys in blue laid down their lives in the greatest battle ever fought to save this land of ours and our liberties; and

Whereas we have noted that within the last few years many national memorials to distinguished men, and memorials to Presidents Franklin D. and Theodore Roosevelt, Wilson, Madison, and others have been approved, while our permanent resolution adopted unanimously at our annual convention in Rochester, N.Y., in 1934 has been overlooked; and

Whereas 100 years have already passed and year after year, for the last 27 years our legislation has been before Congress begging for this long-delayed honor: Now, therefore

Attention is directed to the debt all citizens of this country owe to our dead heroes and particular request is made to all Members of Congress to whom we have delegated the power to use in behalf of our national shrine resolution now under consideration in both Senate and House that early action be taken on this important legislation.

INTERNATIONAL PAYMENTS IMBALANCES

Mr. BUSH. Mr. President, I ask unanimous consent to have printed in the RECORD following my brief remarks an editorial from the Washington Post of this morning, September 13, entitled "Toward Stronger Currencies."

The editorial throws some bouquets toward the report of a subcommittee of the Joint Economic Committee, of which I am a member. It discusses the report of the Reuss subcommittee on the matter of our balance-of-payments deficit.

Toward the end of the article the following language appears:

The report might have been more explicit about measures needed to correct the American balance of payments, as a minority statement observes. No international credit

mechanism can be a substitute for such measures, and without them none can hope to succeed.

The minority statement referred to in the language I have just read is contained in the report under the heading "Views of Senators PRESCOTT BUSH and JOHN MARSHALL BUTLER," and is found on pages 23 and 24. I ask unanimous consent that those minority views be printed in the RECORD following the printing of the editorial which I have just mentioned.

There being no objection, the editorial and individual views were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 13, 1961]
TOWARD STRONGER CURRENCIES

Means to improve the international monetary mechanism and thereby strengthen the dollar and other currencies are the subject of an interesting and constructive report of a committee headed by Congressman HENRY REUSS. Basically, the Reuss report points out, the international financial system is caught in a dilemma. As world trade expands, the need for gold and currency reserves to meet temporary imbalances goes up too. In the recent past, a good part of new reserves has been provided by the dollars that other countries have earned from surpluses with the United States. The U.S. balance-of-payments deficit, in other words, has enabled other countries to strengthen their financial position. But the position of the dollar has become more vulnerable owing to the rise in these foreign-held balances, which foreign official holders could convert into gold. To protect the dollar, the United States has been trying to put its balance of payments into equilibrium. But to the extent that this effort succeeds, the rest of the world will lose its principal source of new reserves. Inadequate reserves would invite deflationary policies, restrictive trade practices, and even currency instability.

International currency reserves do not, of course, need to grow in exact proportion to the rise in world trade. These reserves are not working balances, but serve to give protection against a rainy day. If increasing stability of trade reduces the prospect of rainy days, the need for reserves diminishes. Recent large payments deficits of the United States have greatly increased world reserves, and the Reuss report's statement that as long as any one country is short of reserves, the whole world is, goes too far. But for the long run there is little doubt that larger reserves will be needed.

In its recommendations for methods of strengthening international resources, the report argues for new borrowing powers for the International Monetary Fund. They should be for fixed amounts and definite periods. Countries pursuing inflationary policies would have access to these resources only if they agreed to take remedial action. These suggestions appear to be in line with the thinking of the IMF, which will probably be firmed up at the Fund's Vienna meeting on September 18.

The very strong stand taken by the report against any change in the gold value of the dollar or other currencies ought to contribute to international confidence. So should the recommendation that the Federal Reserve's 25-percent reserve requirement be dropped and all the Nation's gold clearly earmarked, as backing for its international obligations. The report might have been more explicit about measures needed to correct the American balance of payments, as a minority statement observes. No international credit mechanism can be a substitute for such measures, and without them none can hope to succeed. These measures, how-

ever, aimed mainly at the expansion of exports, are expected to be dealt with in a separate report by another committee under chairmanship of Congressman HALE BOGGS. Given the none too reassuring trend in the balance of payments, the Boggs committee report should read as interestingly as the Reuss report does.

VIEWS OF SENATORS PRESCOTT BUSH AND JOHN MARSHALL BUTLER

Because the subcommittee has not taken time to digest the testimony before it, or to debate and discuss the issues, conclusions, or recommendations, we are not willing to join in or approve this report.

The difficult economic problems inherent in international trade imbalances and settlement arrangements are now greatly complicated by the cold war which has added heavy overtones of an international political and diplomatic order. Conflicting East-West ideologies, emerging national ambitions, together with the constraints which world ferment imposes upon our domestic economy have thus made pronouncements such as those in this report extremely sensitive and delicate.

Certainly the expert witnesses who appeared before the subcommittee have made substantial, thought-provoking, and helpful contributions to the understanding of these issues. These contributions and the report prepared by the subcommittee staff, deserve serious and mature consideration, however, before a hasty set of findings and formal recommendations are put forward.

1. Foremost among the recommendations of the report, for example, is one proposing unilateral actions to be taken "to maintain confidence in the dollar as a principal reserve currency." Laudable as this objective is, there are, we believe, more formidable problems than the subcommittee report seems to recognize in arriving at precisely what actions will best foster and maintain that confidence. This is so because "confidence" is a state of mind—an elusive, sometimes emotional, and always a fragile thing which must be built up and nurtured over time.

The persons who do business and take risks in international trade and finance are likely to place very great emphasis on evidences of a nation's financial responsibility. Thus, it may well be that a congressional report such as this, which suggests that the first thing this country should do unilaterally is to "pursue vigorously our national economic goals of maximum employment, production, and purchasing power," may easily be misinterpreted.

Does this imply that these objectives are to be placed above reasonable price stability? Would it not be more reassuring to international confidence to show by our actions a determination to work for a cyclically balanced Federal budget? Would not confidence be better inspired by demonstrating our ability to control domestic costs by adopting policies and practices necessary to increased economic productivity, while relying to the largest extent possible upon the free market, as opposed to the control and manipulation of selected segments?

2. An example of an attempt to impose Government manipulation as a substitute for market forces is the subcommittee recommendation that the Federal Reserve System pursue a policy of purchasing all maturities of Federal securities in the open market. The report shows a disregard for the traditional American market system by thus brushing aside the judgments of the market in this important area.

3. Perhaps the present 25-percent gold cover against Federal Reserve notes and deposits is no longer a necessary requirement. We fail to see, however, how removal—or even a subcommittee recommendation for removal—at this time can be conducive to

international confidence in the stability of the dollar.

Any contribution to confidence which action to remove the statutory cover might have would certainly be greater if taken from a position of strength and a demonstrated capacity for solving our long-run balance-of-trade problems, rather than at a time when it risks interpretation as an expediency and palliative turned to from a position of weakness. This report itself stresses the current weaknesses and inadequacies of reserves, the evils of "hot" money, the need for negotiating a reallocation of mutual defense costs, and the seeming persistence of our balance-of-trade problem.

The fact, largely glossed over in the subcommittee report, is that the trend in our long-run balance of payments appears to be worsening despite modest efforts to right it. We would want, incidentally, to examine much more closely than I believe the subcommittee has, the thesis of the report that overall world reserves should be deemed deficient "so long as there is any deficiency of reserves in any country."

4. While we agree that every possible effort should be made to encourage the liberalizing of international trade by our own action and in cooperation with other countries, we think it presumptuous and diplomatically inexpedient for the United States, as a national policy, to accept the subcommittee's recommendation that we seek to influence other developed countries to rely, as an internal matter, on taxation rather than on higher interest rates for anti-inflationary action.

5. Finally, our concern with the subcommittee's conclusions and recommendations springs from a seeming emphasis on urgency in setting up a supplemental credit agreement to be rushed through diplomatic negotiation and legislative action. Needless to say, every problem that we can put behind us is so much to the good. The real need for urgency, however, lies in correcting the difficult root causes of the persistently adverse trend in our payments position, rather than in grasping at institutional changes or a new set of monetary mechanisms and settlement arrangements rushed through Congress in the expectation that these will assure long-term equilibrium.

On the present evidence, we go along with the recommendations of the report (1) that we reaffirm our opposition to an increase in the price of gold and to further devaluations or revaluations in the exchange rates of the principal currencies, and (2) that greater subscriptions to the existing IMF might be desirable for countries with plentiful present reserves. We would agree also in emphasizing that American export expansion will depend on efforts of American business to offer attractive products at competitive prices in markets which have many other sources of supply.

LEAVE OF ABSENCE FOR SENATORS WHO ARE DELEGATES TO THE INTERPARLIAMENTARY UNION CONFERENCE IN BRUSSELS

Mr. MANSFIELD. Mr. President, the following Senators must leave tonight for the Interparliamentary Union Conference which opens tomorrow in Brussels: The Senator from Tennessee [Mr. GORE], the president of the joint-American group; the Senator from Alaska [Mr. GRUENING]; the Senator from Wyoming [Mr. HICKEY]; and the Senator from Colorado [Mr. ALLOTT].

I have discussed this matter with the distinguished minority leader. Because of the significance of this meeting and

the need for American representation, I now ask unanimous consent, on behalf of the minority leader and myself, that these Members of the Senate be given official leave of absence, in order to attend this most important Conference, and to do so at the request and the urging of the Senate.

The Interparliamentary Union plays a vital role in the strengthening of democratic institutions. Meetings of the Union enable legislators from the Parliaments and Congresses of the free world to share views and exchange knowledge about common problems and concerns. This has a very beneficial effect in developing closer ties between the legislative assemblies of democratic nations, and in fostering democratic government throughout the world.

It is clearly in the national interest for the Congress of the United States to be fully represented at these deliberations.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. ENGLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DODD in the chair). The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. ENGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT TO SHIPPING ACT OF 1916

Mr. ENGLE. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The PRESIDING OFFICER. If there is no objection, the Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 6775) to amend the Shipping Act of 1916, as amended, to provide for the operation of steamship conferences.

The PRESIDING OFFICER. With respect to the pending business, the committee amendment strikes out all after the enacting clause and inserts a substitute, which, under Senate precedents, is considered as original text for purpose of amendment. Any amendment should be proposed to the committee amendment.

The committee amendment, if agreed to, is not open to further amendment.

Mr. ENGLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ENGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENGLE. Mr. President, on June 12, 1961, the House passed on the consent calendar H.R. 6775, with amend-

ments. The bill was referred to our Committee on Commerce the following day.

Examination of the House report (H. Rept. No. 498) and the hearing revealed the following matters, well worth noting:

First. The bill was designed to authorize the Federal Maritime Board—now the Federal Maritime Commission—under certain specified conditions to permit ocean common carriers serving U.S. foreign commerce, and conferences of such carriers, to enter into exclusive patronage, dual-rate contracts with shippers. Steamship conferences were defined as "associations of steamship lines serving particular trade routes in world commerce intended under our law as a means of providing stability for both carriers and shippers through supervised self-regulation among competing carriers on particular routes."

Of dual rate contracts the report said, page 2:

One of the principle devices employed by steamship conferences in American foreign commerce is the so-called dual rate system, pursuant to which conference rates are set at two levels. The lower rate is charged to shippers who sign contracts agreeing to ship exclusively on vessels of members of the conference. The higher rate is charged to shippers who do not so agree.

Mr. President, I would observe at this time that the first conference agreement was entered into almost 100 years ago, in 1877. These conference arrangements have been traditional in the maritime industry ever since that time.

Second. The bill was the result of more than 2½ years of intensive study and hearings by a special subcommittee of the House Merchant Marine and Fisheries Committee, working in close cooperation with the staff of the Antitrust Subcommittee of the House Judiciary Committee which itself had been conducting related investigations of steamship conference activities.

Third. As to whether shippers and carriers favored steamship conferences and dual-rate contracts, the House report said, page 12:

The conference system, with an appropriate tying device, have proven to be the most effective method, both from the point of view of the carrier and shipper (to assure continuity of service on a particular route with a degree of stability of rates). In the course of the hearings before the committee, virtually all of the witnesses, both carrier and shipper, testified that they desired the continuance of the dual-rate contract system and that some such system was virtually a necessity for their continued successful operation.

In its conclusion the House report stated (p. 13):

Witnesses before the committee have been practically unanimous in their support of the conference system. A majority of witnesses have support[ed] the dual-rate system. The shippers on the one hand look to this system to provide stability of rates, and for assurances that their transportation costs are identical with those of their competitors shipping within the same conference. On the other hand, the owners and operators of oceangoing vessels flying the flag of the United States find that the conferences and the dual-rate system offer the only means

by which the American lines can be assured of continued patronage in our foreign trade.

Fourth. In view of the fact that the bill passed the House on the Consent Calendar, with the chairman of the House Judiciary Committee present, we were somewhat surprised to find the following statements at pages 12-13 of the report:

The Department of Justice testimony on the legislation was generally unfavorable. While its position is consistent with the antitrust policy of the United States, it fails to take into account the peculiar nature of the particular business involved.

The hearings of the committee have made it quite clear that our traditional antitrust concepts cannot be fully applied to this aspect of international commerce. Your committee has concluded that any attempt to effect regulation of this commerce in a measure comparable to that applied to our domestic commerce would be highly detrimental to our essential American-flag merchant marine. Accordingly the committee has decided that it should encourage the continued maintenance of effective conferences and that, within safeguards, it should authorize and direct the Federal Maritime Board to approve exclusive patronage arrangements without which conferences might well become ineffective.

The question immediately presented to our committee was whether H.R. 6775, as it passed the House, was so obviously sound that to study it further would serve no worthwhile purpose. Had such been the case, no further extension of the interim dual rate law, which was due to expire on June 30, 1961, would have been necessary. Indeed, enactment of the bill under those circumstances would have brought to an appropriate conclusion a legislative endeavor which began in 1958 with the Supreme Court's decision of *Federal Maritime Board v. Isbrandtsen Co.* (356 U.S. 481 (1958)).

On June 16, our Merchant Marine and Fisheries Subcommittee held a hearing on the bill. Despite the brief notice it turned out to be a standing-room-only affair. Congressman THOR TOLLEFSON, ranking minority member of the House Merchant Marine and Fisheries Committee, testified forcefully and urged us to make a number of major amendments to the bill. His testimony brought sharply to our attention the fact that he and Congressman JOHN RAY, who is a member of both the Merchant Marine and Fisheries and the Judiciary Committees of the House, joined by Congressman MAILLIARD, had filed additional views appended to the House report.

By then it was beginning to dawn on us that the Consent Calendar passage of H.R. 6775 was more nearly the result of an unwritten truce than it was proof of a generally acceptable, noncontroversial, measure. Before the end of that 1 day's hearing this suspicion had become an absolute certainty. We were convinced then, and we are positive now that the June 30 expiration date of the interim dual rate law, plus certain deadlocks and compromises reached on the House side, caused the House to quietly pass the bill to us.

Our June 16 hearing established that each of the three agencies of our Gov-

ernment most intimately concerned with the bill—the Department of Commerce, including the Federal Maritime Board; the Department of State; and the Department of Justice—wanted various amendments, many of which were highly controversial and a number of which seriously conflicted with each other. While the shipper representatives who testified generally favored the bill, most of them, too, urged us to make major amendments to it. All ocean common carriers which testified opposed enactment of H.R. 6775 as it passed the House. Indeed, the spokesman for all but one of the American-flag ocean common carriers said that his lines would rather have no dual rate legislation at all than have us pass the House bill, unless we made major amendments to it.

Finally, that one day hearing brought forth, through the Department of State, the vigorous opposition of 12 friendly maritime nations to H.R. 6775 as it passed the House. Belgium, Denmark, Finland, France, Federal Republic of Germany, Italy, Japan, the Netherlands, Norway, the Philippines, Sweden, and the United Kingdom protested the extra-territorial scope of H.R. 6775 and its undertaking to regulate various phases of international shipping which they consider outside our jurisdiction and within theirs as sovereign states.

It took us no time at all to decide that what we needed was an extension of the interim dual rate law which would enable us to hear and consider carefully the views and recommendations of all interested parties. Therefore, we reported S. 2154, extending until June 30, 1962, the moratorium bill. The House cut the extension back to September 15, 1961; we acceded to the House amendment; and from July 17 through August 3 we held 6 more days of hearings, took an additional 573 pages of printed testimony, and finally, on August 29, our full committee unanimously reported H.R. 6775 with further amendments.

I stress that the bill now before the Senate was approved unanimously by the full committee on August 29.

I have no intention of consuming the time of the Senate by reviewing in detail matters which we feel are adequately covered by our report, Senate Report No. 860. However, I do want to touch on a few matters I would urge all Senators to keep in mind as they consider our bill and the various amendments which are offered to it. First and foremost, although we have sought and encouraged all interested parties to share with us their views and recommendations as to how we could make the House-passed bill a better measure in the public interest, it is unquestionably true that we have given the greatest weight to the views and recommendations of the Department of State and the Department of Commerce through the Federal Maritime Board, now the Commission. Drafting sessions of considerable length and intensity have been held with representatives of those Departments. Although the Antitrust Division of the Department of Justice has objected to

certain amendments we have made to the House-passed bill, I can safely say that every change of any consequence which we have made, and to which the Department of Justice has objected, we made at the request of, or in keeping with, the recommendations of either, and in most cases both, the Department of State or the Department of Commerce, Federal Maritime Board.

Our committee found itself caught, just as did the House Merchant Marine and Fisheries Committee, in the cross-fire of conflicting advice given by the Department of State and the Department of Commerce, Federal Maritime Board, on the one hand and the Department of Justice, Antitrust Division, on the other. Generally speaking, we followed the recommendations which we found were premised upon considerations of great importance to our foreign policy, our foreign trade, and our American flag merchant marine.

While we rejected certain proposals made by the Department of Justice, we did so with the conviction that their rejection worked no harm whatever to important principles of sound antitrust doctrine. What we appreciate, but what certain domestic-oriented antitrust personnel in the Department seem incapable of understanding, or unwilling to accept, is this:

International ocean common carriage, as an industry, inevitably tends toward monopoly unless industry self-regulation or Government regulation, or both, control rate competition. Otherwise, the lines involved engage in open rate warfare among themselves. Unless reasonable and effective industry self-regulation through steamship conferences is encouraged, subject to reasonable Government supervision, only the strong will survive. Said another way, the Antitrust Division's dedication to the principle of encouraging lines, eligible but unwilling to join Commission-approved and regulated conferences, to stay outside and cut the conference rates, cannot help but lead to the destruction of the conference system, with the inevitably monopolistic result of ocean rate wars which shippers dread as much as do the carriers.

In amending the House-passed bill, as we did, our committee gave considerable weight to a fact I urge Senators to keep uppermost in mind as they consider the bill, and especially as they consider the proposed amendments of the distinguished Senator from Tennessee [Mr. KEFAUVER]. That fact is simply this:

The only nonconference lines today which desire to operate regularly on the basis of cutting conference rates are foreign-flag lines. Every American flag ocean common carrier offering regular liner service, including Isbrandtsen, desires to operate within Commission-approved and regulated conferences.

American-flag lines' solid preference for operating within the steamship conference structure is undoubtedly due to a number of factors. In the first place, although our American lines are among the best in the world, there is no denying that they are the highest cost operators. In an international ocean rate war, our American-flag lines, even if subsidized, could not survive for long. This is so because operating differential

subsidy does not cover all items of operating costs. For example, none of the administrative or overhead expenses of American-flag subsidized lines are covered by operating differential subsidy payments, even though the administrative and overhead functions of our subsidized lines are carried out by personnel and through procedures which are much more expensive than those employed by competitive foreign-flag lines. And so it is, that our American lines, including all of our subsidized lines, have the most to lose if Commission approved—and I stress that—and regulated conferences are forced to dissolve.

There are three other matters concerning exclusive patronage dual rate contracts as used by Commission-approved conferences which I have found it helpful to keep in mind as I have deliberated about this bill:

First, with the exception of the United States, dual rate contracts and the more coercive exclusive patronage device known as the deferred rebate system—which is expressly prohibited by section 14, First, Shipping Act of 1916—are lawful and used extensively, without Government regulation or supervision, throughout the rest of the maritime world. Second, all carriers and conferences using dual rate contracts in the foreign commerce of the United States must offer them to all shippers on a non-discriminatory basis. In practice they have apparently done so. Furthermore, it would clearly violate the present Shipping Act of 1916, and that act, as it would be amended by our bill, if they did not do so. And third, all conferences serving U.S. ports must admit to membership and to participation in their dual rate contracts, all other ocean common carriers desiring to join on the same reasonable terms as the other conference lines.

All Senators should note carefully the public interest safeguards which we have written into our amended version of the House-passed bill.

In the first place, no conference may institute a dual rate contract until it has been approved by the Commission. The Commission may not approve any such contract if it finds it detrimental to the commerce of the United States, or contrary to the public interest, or unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors.

In addition, no dual-rate contract may be approved by the Commission unless the contract expressly permits prompt release of the contract shipper with respect to any shipment for which contract carriers or conference thereof cannot provide the space he needs on reasonable notice; provides that rates shall not be increased for a reasonable period, in no case less than 90 days, except in the event of war or other force majeure; covers only those goods as to which he has the legal right at the time of shipment to select the carrier; limits liquidated damages to what would be due at the contract rate on the particular ship-

ment, less the cost of handling; permits the contract shipper to terminate on 90 days' notice; provides for a reasonable spread between contract and noncontract rates, in no event more than 15 percent of the noncontract rate; excludes from the coverage of the contract cargo loaded in bulk without mark or count; and contains other appropriate provisions as required by the Commission.

With all of these protective restraints written into the statute the public interest is, we feel, protected to the maximum extent possible. Indeed, there is some question whether such restricted contracts will assure the carriers the reasonable guarantee they need in order to furnish regular, dependable, and non-discriminatory service. However, our committee believes they will; and accordingly it unanimously recommends enactment of the bill which we have reported, with a few minor technical amendments.

Mr. President, in summary, when the bill as passed by the House came to the Senate Commerce Committee, I asked whether there was any opposition to the bill. Almost unanimously the carriers said they would rather have no bill at all, than to have the bill as passed by the House. The State Department and the foreign-flag lines appeared before our committee and said:

We cannot go into a conference arrangement under legislation of this kind; we cannot do it, because this measure has the effect of applying on an extraterritorial basis the regulatory laws of the United States of America. And even if we wanted to participate in such conferences, we could not do so if we had to subject ourselves to American law, because our governments will not permit us to do so.

The next question was whether these shipping lines actually want a conference system. I asked them that question. All of them said they want a conference system. A conference system has been in operation throughout the maritime world for almost 100 years. But the only way we can get the foreign lines to participate—and the participation must be on an international basis—is to get them to participate on a voluntary basis, for we cannot force them to go into the conferences; we cannot mandate them into the conferences; and we cannot apply American law to foreign-flag lines. As a consequence, unless the foreign-flag lines are willing to come in on a voluntary basis, there is no way to have a conference system.

Therefore, we tried to write a measure which would provide for a system in which the foreign-flag lines would be willing to participate.

The lines accept lower rates from shippers which agree to give them exclusive contracts. But in order to prevent either the American-flag lines or the foreign lines which participate in the conferences from imposing upon American shippers rates and arrangements discriminatory against the American shippers and adverse to the American shippers and the American foreign trade, we have included a provision that unless the conferences meet certain specifica-

tions—namely, unless they are not discriminatory against American lines or American shippers or American courts or the American public interest—the Maritime Commission can step in and can order the American-flag lines out of the conference, thereby dissolving the conference.

The only hold we have over the foreign-flag lines is their desire to participate in these conferences. By empowering the U.S. Maritime Commission—as we do in this measure—to pull out the American-flag lines when and if the conferences are discriminatory against American shippers or adverse to the American public interest or injurious to the foreign trade of the United States, we give all the control that it is possible for us to give and at the same time maintain a conference system at all.

That is the kind of measure we today present to the Senate. It provides for a system which permits the conferences to operate; but it gives the Maritime Commission authority to see to it that the conferences do not operate adversely to the public interest; and if the conferences do operate adversely to the public interest, the only action available to us is to take out the American-flag lines. Under the provisions of the bill, the Maritime Commission is ordered to do so under such circumstances. The conferences must be affirmatively approved by the Commission.

Mr. President, I believe we have written the most practical bill we can possibly write; and it will make it possible to continue in existence and in operation these conference systems, which have stabilized world commerce and have been a part of the commerce on the seas for almost 100 years—since 1877; and at the same time we undertake, insofar as it is practical and possible to do so, to prevent the conferences from operating in a discriminatory manner against the shippers, the public interest, or the foreign trade of the United States of America.

Mr. BARTLETT. Mr. President, will the Senator from California yield?

Mr. ENGLE. I yield to the distinguished Senator from Alaska.

Mr. BARTLETT. Mr. President, the Senator from California is entitled to credit for bringing this bill to the floor. In fact, in my opinion, he is entitled to much credit. Really, he was handed quite a package, because it was only 3 months ago this very day that the House passed the bill, after, as I understand, 2½ years of hearings; and the Senate Commerce Committee then had the task of either accepting that bill as it was or working out an amended bill.

It was the junior Senator from California [Mr. ENGLE] who headed the subcommittee on this subject. From my own knowledge, I know he spent endless hours on this complicated, highly technical, and very important subject.

I wish to pay him tribute now for what he has done in this area of such consequence to our trade and to the U.S. merchant marine, because, although the bill is not perfect—for no legislation ever is, it represent an ar-

rangement with which, in my judgment, all can live.

The simple fact is that the testimony taken before the subcommittee of the Commerce Committee demonstrated beyond a shadow of doubt that if the conference system failed or went to pieces or broke down, there would be several evil results. One of them—an important one—would be that the American merchant marine, already so battered and beaten in recent years, would be further hurt, almost to the point of entire destruction.

Our flag carriers, as the Senator from California has said, benefit from the conference system, because—as he has also said—it is obvious that foreign ships operate more cheaply than our own.

Nevertheless, the foreign-flag ships have been willing to abide by the terms, agreements, and conditions of the conference system; and it has worked fairly well, all things considered.

Mr. President, for the United States and our Government now to tell these foreign-line operators that they must submit their confidential business data and all their records to the Department of Justice or any other agency of our Government is not workable. The problem—as has been stated by the Senator from California—is one which is international and extraterritorial; and our committee has been informed that if any effort is made to require foreign-line operators to submit their confidential records to an agency of our Government, that fact in itself may cause a collapse of the conference system.

It is my understanding—and I ask the Senator from California whether I am correct—that several foreign governments already have instructed their shipping operators not to abide by any such request from the U.S. Government.

Mr. ENGLE. I am glad to have that inquiry, and to state again that the State Department protested the bill the House passed; and 12 friendly nations—Belgium, Denmark, Finland, France, the Federal Republic of Germany, Italy, Japan, the Netherlands, Norway, the Philippines, Sweden, and the United Kingdom—all protested, and said that not only did they not want their flag lines to submit themselves to such jurisdiction, but they would prohibit it and they would protest it; and they did protest it, through the State Department.

We have had these conference systems for almost 100 years. We have conferences on a basis that makes it possible for foreign-flag lines to participate on a voluntary basis. We cannot mandamus them, and bring them in.

Mr. BARTLETT. We are equal partners. We are not the boss.

Mr. ENGLE. That is correct. If we do not do it that way, we are not going to have a conference system. The basic question is whether or not we want these conference systems. They have operated since 1877. They were considered proper and legal until 1958, in the *Isbrandtsen* case, in which it was held that a U.S. line could not violate the antitrust laws. Congress, because of the importance of maintaining the confer-

ence system, has validated the system notwithstanding the Supreme Court decision. Now we are trying to get a piece of legislation that makes it possible for conference systems to go forward with international trade, which everybody agrees is necessary to the permanence and stability of the U.S. maritime system.

We have undertaken to write legislation to make it possible to continue these 100-year-old conference systems and at the same time put them under regulation of American law so far as that is possible. The only way that is possible is through the grip we have upon our own lines to pull them out of the conferences if they are unfair and discriminatory, and break the conference. That is the only way we have. That is the way the legislation is written.

Mr. BARTLETT. Mr. President, will the Senator yield further?

Mr. ENGLE. I am delighted to yield.

Mr. BARTLETT. Is it not true that the whole situation has been under review many times over the years? The hope was that another, and perhaps better, arrangement might be made; but, unfailingly, and always, this conference arrangement, which has been in effect, as the Senator has said, almost 100 years, is the only logical way for this operation to be conducted. Is it not the case that this subject had voluminous study before enactment of the 1916 Shipping Act?

Mr. ENGLE. That is correct. Studies of this whole problem have been made over the years. That matter is dealt with on page 6 of the committee report. It refers, first, to the study made by the British Government. The King of England in 1906 ordered a royal commission investigation of conferences to determine whether their operations had caused injury to British or colonial trade and, if so, what remedial action should be taken. In 1909 the royal commission reported:

The advantages conferred by shipping conferences are substantially dependent upon the system of deferred rebates or some system equally effective as a "tie" upon the shippers and equally uniform in its application.

In our own country, in the 62d Congress, in 1912, Congress authorized a study of the same subject matter by the House Merchant Marine and Fisheries Committee, the chairman of whom was J. W. Alexander. The report was thereafter known as the Alexander report. The committee studied the proposition and also arrived at the conclusion that the conference systems were absolutely necessary.

We have had hearings going on in the House committees, both in the Merchant Marine and Fisheries and the Judiciary, comprising some 13,000 pages of testimony which have been taken in the last 2 years.

I read previously, in the statement I made, the conclusion drawn by the House Committee on Merchant Marine and Fisheries, namely, that the conference systems were necessary to the stability of international trade.

We have been up and down this sub-

ject and have studied it since 1909, when the royal commission studied it, and since the Alexander committee study made in 1912. Since then we have passed the Shipping Act of 1916. We have passed the Shipping Act of 1936. The subject has been under constant review. We arrived at the same conclusion reached by the royal commission in 1909 and the Alexander report in 1912, namely, that these conferences are absolutely necessary to the stability and permanence of the merchant marine system.

The answer to the question, "Do we want conferences?" has been given time and time again for over half a century. The problem is how these conferences can be continued and at the same time, because they have a tendency toward monopolistic practices, how those practices can be restricted in the public interest. That is what the bill undertakes to do.

Mr. BARTLETT. Mr. President, will the Senator yield further?

Mr. ENGLE. I am delighted to yield.

Mr. BARTLETT. In that connection, the Senator has previously pointed out that the public interest, which is hedged about in the legislative offering before us, is safeguarded because of what the Federal Maritime Commission is required to do under certain circumstances. It is also true that there is no Government regulation whatever and that members of the conference may operate without any regulation whatsoever from their national governments. The suggestion that there be Government intervention in the manner here proposed apparently has never been seriously offered.

The Senator from California a while ago made what I consider to be an important, and even a vital, point when he said these conferences are not exclusive clubs. We do not get in them and then blackball any other person who desires to enter and join them.

On the contrary, the law now specifically states—and it will be restated under the bill before the Senate—that the maritime company which is not in the conference and which wants in must be permitted to join if it proves ability and intention to operate a regular service in the trade.

I think we ought to dwell a bit more on that point. What will happen if there is not a conference? There was abundant testimony before the Committee on Commerce that regularity of service is one thing which is likely to disappear. Rate wars will be instituted without a doubt, and without delay. Everyone would be delighted if that should occur, for a little while, but not for long, because companies would be forced out of business and the stronger would take over. If anyone thinks for a moment that the rates would stay at depressed levels, he is incorrect.

Mr. ENGLE. Mr. President, will the Senator permit me to interject at that point?

Mr. BARTLETT. Certainly.

Mr. ENGLE. We received a statement from one of our colleagues at the time the bill was under consideration that in respect to the business enterprises in

which he was concerned—and they were substantial business enterprises—in the absence of a conference arrangement the business enterprise could never tell what would be the freight rate, because there would be one rate one day and another the next. As a consequence, it was not possible to bid or to do business upon the basis of stability. The rates would stay firm and solid for a while, when there was an agreement, and then when a rate war went on and half of the companies went broke the rates would go sky high. As a consequence, if an enterprise made a contract for the delivery of goods in other parts of the United States by ship, to last over a period of years, there was no assurance that the freight rate would not be changed in the interim, to make the contract not worth having and, in fact, a solid detriment. That is why we need the kind of stability proposed.

Mr. BARTLETT. That is correct. The committee was informed that such occurs too frequently in respect to some of the nonconference operators. One might offer a shipper a very attractive rate, and the shipper might accept, only to discover that the rate for the next voyage would differ radically and would be much higher. Also, no regularity of service was assured. In fact, in too many cases regularity simply did not exist.

That brings me to my next point. Not only the shipping companies but also, to a great degree, the shippers, desired passage of the bill now before the Senate. These are the people who pay the bills. They know, as a result of sad experience, that unless they can operate upon a stable basis, they will be in trouble.

As the Senator from California said, and as I repeated, these people have been in trouble when they have gone hunting to seek more attractive rates.

The shippers came before the committee. They are not only content with a conference system, but they insisted before us that it was the only practical way and the only sensible way to do the job.

I do not suppose any of us is delighted or altogether happy because of confirming into law an arrangement which is admittedly monopolistic in certain respects, surrounded by safeguards though it may be.

Mr. ENGLE. Mr. President, will the Senator yield for another interjection?

Mr. BARTLETT. I yield.

Mr. ENGLE. The Senator refers to this as a monopolistic practice. A monopoly excludes everyone. The bill specifically provides that the conferences may be set up, when approved by the Maritime Administration, with certain restrictions, and that any common carrier who wishes in can get in on equal terms.

Mr. BARTLETT. That is basic, and that is vital. If we could get away from any grouping of people not smiled upon by law, I am sure we all would be glad to do so. No practical alternative has ever been offered, and the attempts in this direction date back over 10 decades. Probably the time will not come when a better alternative will be offered.

This is why we bring the bill before the Senate now, in the hope that it will be agreed to, because it provides a sensible arrangement to accommodate the needs of the Nation. I am confident it will have the effect of maintaining vigor in the American merchant marine and of promoting trade, both foreign and domestic.

The bill is all the better, in my opinion, because there is a further safeguard of the public interest, thanks to the willingness of the Senator from California to accept an amendment offered by my colleague [Mr. GRUENING] and myself to provide that when the Governor of a State feels his political area is being harmed by any rate structure within the conference he may make an appeal to the Federal Commission and the Commission must inquire promptly into the merits of the appeal and make a determination.

Mr. ENGLE. Will the Senator permit me to interject further at that point?

Mr. BARTLETT. Assuredly.

Mr. ENGLE. The Senator from Alaska and his colleague [Mr. GRUENING] are entitled to great credit for presenting the problem to the committee. The burden of their complaint was that the ports of Alaska have been discriminated against in a conference arrangement. In the trans-Pacific freight conference of Japan, Alaskan ports were charged 30 percent more for hauls than, for instance, was charged for the hauls from Japan to the port of San Francisco or some of the other ports on the west coast.

It was claimed that the conference arrangement was discriminatory and unfair to Alaska, and the Senators wished to have it corrected, and wished to have a fast way of getting the situation corrected. The bill provides that the Commission can take immediate cognizance of arrangements within the conference, not only those which are discriminatory as against shippers but also those which are discriminatory as among ports. There will be a hearing and a decision within 120 days.

The senior Senator from Alaska and his colleague have performed an excellent service for their State, as they always do. They have succeeded in having written into the bill the kind of protection to which their people are entitled, establishing procedures which will make it possible for the State of Alaska to redress any wrong which might occur through any discriminatory conference system which may be set up in the Pacific area.

Mr. BARTLETT. Or for any other State to do likewise, should the need arise.

In conclusion, Mr. President, I reiterate my praise for the junior Senator from California, whose dedication to this tough assignment has been most considerable. The Senator has worked hard and usefully, and has brought to the Senate a bill which I believe is a good bill and which should be passed.

Mr. ENGLE. Mr. President, I am very grateful to the Senator from Alaska for his comments and for the kind words he has stated with respect not only to

the junior Senator from California but also with respect to the proposed legislation.

Mr. BARTLETT. Mr. President, will the Senator yield for one more comment?

Mr. ENGLE. I am very glad to yield.

Mr. BARTLETT. I also wish to pay tribute to my friend from Maryland [Mr. BUTLER] who is in the Chamber and about to speak, I judge, because of his attentiveness and helpfulness, as is true of his colleagues on the other side of the aisle.

Mr. BUTLER. I thank the Senator from Alaska. He is very kind.

Mr. ENGLE. Mr. President, I yield the floor.

Mr. BUTLER. Mr. President, I intend to vote for H.R. 6775 as amended and reported unanimously by our Committee on Commerce.

I intend to vote against all but a few of the amendments offered by the distinguished senior Senator from Tennessee.

My reasons for both courses are the same, and may be stated briefly:

First, I believe that in order to furnish a regular and dependable international ocean common carrier service to and from the United States, the carriers concerned must be allowed, as they are throughout the rest of the maritime world, to form steamship conferences within which they can agree upon their rates and other competitive practices. Otherwise, history proves that open-rate competition in the international ocean common carrier industry leads to a much more monopolistic situation. This is a fact which domestic-oriented antitrust authorities, having little interest in our merchant marine, would like to ignore.

As the Alexander committee pointed out in its report of 1914, which 2 years later served as the foundation of the Shipping Act, 1916—4 Alexander Committee Report, pages 416-417:

To terminate existing (conference) agreements would necessarily bring about one of two results: The lines would either engage in rate wars which would mean the elimination of the weak and the survival of the strong or, to avoid a costly struggle, they would consolidate through common ownership. Neither result can be prevented by legislation and either would mean a monopoly fully as effective, and it is believed more so, than can exist by virtue of an agreement.

Second, I believe that under many circumstances such steamship conferences must be allowed, as they are throughout the rest of the maritime world, to enter into fair but effective exclusive patronage contracts with shippers. Otherwise, these conferences will not be able to protect themselves and the shippers they serve from the relatively unregulated rate competition of tramp carriers and nonconference lines eligible but unwilling to join the conference. History proves that unless conferences are permitted to enter into such exclusive patronage contracts with shippers, the conferences in many cases will disintegrate because they will be unable to defend themselves against nonconference rate competition.

Third, I note that the bill, as reported unanimously by our Committee on Commerce, conforms closely to the recommendations of the two Government agencies whose interest I deem clearly paramount here; the Department of State and the Department of Commerce/Federal Maritime Board—now Commission.

In addition, prompt enactment of our bill is urged by the great majority of American importers and exporters, and all American and foreign flag conference lines. Indeed, the only people who urge our bill's defeat or the equivalent—that is, acceptance of the chief amendments offered by the senior Senator from Tennessee—are people who are opposed to steamship conferences, or to their use of dual-rate exclusive patronage contracts, or both.

In this connection it should be noted that the House committee's report on the bill—House Report No. 498, page 12—states:

In the course of the hearings before the committee, virtually all of the witnesses, both carrier and shipper, testified that they desired the continuance of the dual rate contract system and that some such system was virtually a necessity for their continued successful operation.

Our committee made similar findings. I mention this to emphasize that anyone who favors any course which would prevent steamship conferences from entering into fair but effective dual-rate contracts with shippers is opposing the overwhelming majority of American shippers.

To put it more specifically, the only American importers or exporters who would favor amending our bill, as the senior Senator from Tennessee would in his amendments C, D, and E, to encourage nonconference lines which are able but unwilling to join Commission-approved conferences, to stay outside and cut conference rates, are among the small minority of American importers and exporters who oppose legalizing dual rate contracts.

Fourth, I am confident that our bill provides ample safeguards of the public interest. As we said at page 11 of our report:

3. The amended bill contains ample safeguards of the public interest: Under your committee's amendments a conference could not institute a dual-rate contract until it had been approved by the Federal Maritime Commission. The Commission could not approve if it found the contract—

- (a) detrimental to the commerce of the United States; or
- (b) contrary to the public interest; or
- (c) unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors.

In addition, no contract could be approved unless it expressly—

(a) Permitted prompt release of the contract shipper with respect to any shipment for which the contract carrier or conference could not provide the space he needs on reasonable notice,

(b) provided that rates shall not be increased for a reasonable period, in no case less than 90 days except in case of war or other force majeure,

(c) covered only those goods of the contract shipper as to which he has the legal

right at the time of shipment to select the carrier,

(d) limited liquidated damages to what would be due at the contract rate on the particular shipment, less cost of handling,

(e) permitted the shipper to terminate on 90 days' notice,

(f) provided for a reasonable spread between contract and noncontract rates, in no event more than 15 percent of the noncontract rate,

(g) excluded from the coverage of the contract, cargo loaded in bulk without mark or count, and

(h) contained other appropriate provisions required by the Commission.

With all these protective restraints written into the statute, shippers' interests would, we feel, be protected to the maximum extent possible.

Incidentally, I wish to note that the senior Senator from Tennessee's amendments K are quite acceptable. They merely serve to underscore what we considered quite clear, that is, that it shall be unlawful to use any new dual-rate contracts until permission to use them has been given by the Commission.

It would be a major mistake to conclude that the above-mentioned public interest safeguards are the only protections which will be afforded by the Shipping Act, 1916, as amended by this act. We tend to forget the large number of restraints and controls which are already imposed by that statute upon the competitive practices of ocean common carriers serving U.S. ports. Therefore, permit me to review what I consider that statute's most important regulatory provisions (46 U.S.C. 80 et seq., 39 Stat. 728):

Section 1: By defining here the term "common carrier by water in foreign commerce," the statute's regulatory reach covers ocean common carriers, "whether in the import or export trade." This equating of inbound to outbound movements becomes quite significant when it is realized that Congress has thus given the regulatory agency the well-nigh impossible task of policing certain proscribed activities, regardless of whether they occur in New York or Bombay.

By providing that "a cargo boat commonly called an ocean tramp shall not be deemed such 'common carrier by water in foreign commerce,'" section 1 specifically exempts from regulation all ocean tramps engaged in the foreign trade of this country.

Section 14 of the Shipping Act, 1916, provides that certain practices by common carriers by water in foreign commerce are forbidden; namely, the use of deferred rebates, the use of fighting ships, retaliation against shippers by refusing space because a shipper has patronized another carrier or has complained to the Board, the making of unfair or unjustly discriminatory contracts with shippers based on the volume of freight offered or unjust discriminations in the matter of cargo space accommodations and settlement of claims. A fine of not more than \$25,000 is prescribed by this section for any carrier which violates any provision of this section.

Section 15 provides that every common carrier by water or other person subject to the Shipping Act, 1916, must

file with the Board a true copy of every agreement with another such carrier or other person subject to the act, "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses or traffic, allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement."

I have emphasized the "preventing or destroying competition" language to show that those who drew the Shipping Act, 1916, were well aware of the fact that in certain circumstances agreements which "prevent or destroy competition" are not detrimental to the commerce of the United States. This is a feature of the Shipping Act which the Antitrust Division at the Department of Justice would like us to forget. But we cannot. To do so, would ignore the fact that international shipping is a tough business; a business which we can hardly expect to remake in our own domestic regulatory image.

The Board—now the "Commission"—is empowered, but not required, by this section to disapprove, cancel or modify any agreement, whether or not previously approved by it, which it finds unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this act, and shall approve all other agreements.

Only those agreements requiring Board approval, and approved by the Board, shall be lawful. Before Board approval, or after disapproval, it is unlawful to carry out any such agreement.

Every agreement lawful under this section is by this section excepted from the antitrust laws.

A penalty of \$1,000 a day for each day a violation of this section continues, to be recovered by the United States in a civil action, is prescribed by this section.

By section 16, Shipping Act, 1916, common carriers by water in foreign commerce, individually and in conjunction with others, are forbidden, upon pain of a fine of not more than \$5,000 for each offense, to grant undue preference or advantage to any person, locality or description of traffic, or to subject any person, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. They are also forbidden to allow a person to obtain transportation at less than the established rate by the use of false billing or other unfair device, or to influence insurance companies to discriminate against competing water carriers.

Section 17: This section prohibits all common carriers by water in foreign commerce from charging any rate which is unjustly discriminatory between ship-

pers or ports, or is unjustly prejudicial to U.S. exporters as compared with their foreign competitors. It also requires that every carrier and every other person subject to the act shall establish just and reasonable regulations and practices relating to the receiving, handling, storing, or delivering of property.

Section 20: This section of the Shipping Act, 1916, prohibits the disclosure of certain information by a common carrier or other person subject to the act to any unauthorized person if such information may be used to the detriment or prejudice of the shipper, consignee, or carrier.

Section 21: This section empowers the Board to require any common carrier by water, or other person subject to this act, to file with the Board "any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this act."

Two U.S. circuit courts of appeal have recently upheld the Board's power, under this section, to call for the production of documents—copies of section 15 agreements and other related documents—located abroad. (*Kerr Steamship Co. v. United States*, 284 F. 2d 61 (2d Cir. 1960), *Montship Lines, Ltd. v. Federal Maritime Board*, decided June 30, 1961 (D.C. Cir.)) Both courts carefully avoided passing on the question of the extent to which the documents sought could be forcibly elicited. In *Montship*, the court said that prior to any determination of whether foreign laws which forbid the production of documents excuse compliance with the Board's order, the petitioners—mostly foreign lines—would have to prove to the Board that they had tried in good faith to obtain a waiver of such restrictions from their local governments.

One hundred dollars for each day of default shall be forfeited to the United States by anyone who fails to file any documents as required by section 21; and for anyone convicted of destroying, mutilating or falsifying such documents, a fine or not more than \$1,000, or imprisonment for not more than 1 year or both, is provided.

Section 27: This section of the Shipping Act, 1916, allows the Board by subpoena to compel the attendance of witnesses and the "production of books, papers, documents, and other evidence from any place in the United States."

Returning now to our bill, I believe that while the Shipping Act, 1916, as amended by our bill, will go much further than any other nation has ever before gone, it can and must be enacted—and enacted now—in order to make it clear beyond doubt that steamship conferences have the right to enter into fair but effective dual rate contracts.

I subscribe wholeheartedly to the advice of the Under Secretary of State, George W. Ball, to our subcommittee on August 3, 1961. After urging enactment of a bill such as that which is today before the Senate, Mr. Ball said:

- We must ascertain the extent to which national, unilateral regulatory authority

can, and should, extend into international shipping activities. Although the primary problem before this subcommittee is its work on H.R. 6775, I believe that a study should be begun in the near future to examine in detail this vexing problem of conflicting jurisdictions and the regulation of international commerce by sea.

In an appendix to his statement, Under Secretary Ball reported the responses which the Department of State had received to a questionnaire it had submitted in July 1961, to the embassies of the 12 maritime nations—Belgium, Denmark, Federal Republic of Germany, Finland, France, Italy, Japan, Netherlands, Norway, Philippines, Sweden, and the United Kingdom, nations which previously had commented on H.R. 6775. A fair summary of his report follows:

First. In answer to the questions of how much they regulated the competitive practices of carriers or conferences engaged in their foreign, waterborne commerce, the nations replied, "no regulation, or 'no effective regulation.'"

Second. As to the limitations those nations would place on the production of documents or information by their nationals for use in legal proceedings abroad, five nations—Belgium, Italy, Japan, the Netherlands, and the United Kingdom—said they would not permit their nationals to comply; most of the others said they reserved the right to restrict document production.

Third. As to whether those nations regulated ocean freight rates in their foreign commerce, or, if not, how they were assured of the reasonableness of rates, all replied that they attempted no such regulation. Instead, they said they left this matter to the forces—as they called them—of "free competition." Since they had previously said they did not regulate steamship conferences, their use of the term "free competition" differs markedly from that of the Antitrust Division, Department of Justice. Clearly these nations leave the reasonableness of their ocean freight rates to the unregulated steamship conferences and other carriers serving their ports, subject, as they are, to many economic forces which affect the rates they charge.

Fourth. As to whether these nations permit shippers to bargain collectively for ocean freight rates, practically all do.

I urge all Senators to bear in mind that we are the only nation which requires steamship conferences to keep their membership doors open to all common carriers making a reasonable showing of willingness and ability to serve the trade regularly. Our conferences are thus "open shop" affairs; every applicant must be admitted on the same reasonable and equal terms and conditions available to all other members. And once admitted, they are eligible to participate with the other members in the conference's dual-rate contracts.

Another point to bear in mind is that Commission-approved dual-rate contracts must be offered to all shippers or consignees on the same terms and conditions. There cannot be any unjust favoring or preferred shippers or ports.

In closing, I want to express a sincere

word of tribute and commendation to my friend and distinguished colleague, the junior Senator from California [Mr. ENGLE], who served as acting chairman of our Merchant Marine and Fisheries Subcommittee throughout its consideration of this bill, and to the chairman of our full committee, the distinguished senior Senator from Washington [Mr. MAGNUSON]. Both have devoted a great deal of time and thought to this complex problem. Largely as a result of their efforts, our committee was able, unanimously, to report this bill, which should now be enacted without any amendments other than those of a perfecting or technical sort. Mr. President, I hope the Senate will do just that.

Mr. ENGLE. Mr. President, will the Senator yield?

Mr. BUTLER. I yield.

Mr. ENGLE. I desire to express my appreciation for the kind remarks of the Senator from Maryland and the statement he made with respect to the work on the bill. The Senator from Maryland takes an active, vigorous, and intelligent interest in the maritime affairs of this Nation, and has worked constructively with us on this side of the aisle in trying to bring forth a bill that will be fair to the shipping industry and the American public. The fact that the Senator from Maryland is so active and so well informed in this field is largely the reason for the bill being reported unanimously by the Senate Committee on Commerce.

Mr. BUTLER. I thank the Senator from California. I reciprocate very deeply the considerate remarks he has made.

I yield the floor.

HURRICANE CARLA

Mr. YARBOROUGH. Mr. President, on Tuesday of this week, September 12, the Houston Post published a very interesting editorial, entitled "Warning System Enabled All in Exposed Areas To Escape Carla." The editorial, while paying tribute to the use of modern scientific devices in tracking this amazing tropical storm, which resulted in warning the people along the coast, also reviews what happened in the great hurricane that struck Galveston, Tex., on September 8, 1900, when 7,000 persons lost their lives in Galveston and on the mainland. The editorial points out that warnings were given as far back as the 4th of September that the storm was headed that way, but without the scientific knowledge now available, they did not know with what force the hurricane would strike, and out of a population of 15,000 at that time only one-third had left the beach areas, with the result that a great toll was taken.

The editorial pays tribute to the persons and agencies who the writer thinks are entitled to the greatest credit in the evacuation. The editorial points out that the Red Cross, civil defense, and other groups made an excellent record in taking care of the refugees from Carla throughout the threatened region, and states they have earned the highest praise.

training course when recommended by the manager of the employment office or by the Board and such course is available at public expense, he shall not be eligible for benefits with respect to any week in which such failure occurred."

SEC. 8. This Act shall take effect on the first day of the first calendar quarter following its enactment.

Mr. MORSE. Mr. President, the committee has held hearings on the bill. The bill was approved unanimously by the subcommittee and also by the full Committee on the District of Columbia. The chairman of the full committee, the distinguished Senator from Nevada [Mr. BIBLE], is in the Chamber. The bill is noncontroversial.

I may say to the majority leader and the minority leader that the bill is practically identical in form, with no increases, with a bill which passed the House in 1958 but did not receive the action of the Senate.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a statement I have prepared relating to the bill, and a very fine Washington Post editorial of September 4, 1961, commenting on my bill, S. 2194 as reported and on H.R. 5968 which passed the House.

There being no objection, the statement and editorial were ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR MORSE

The bill (S. 2194) bears the bill number of the measure which I introduced on June 29, 1961, but in the course of hearings held before the Subcommittee on Public Health, Education, Welfare, and Safety of the Senate Committee on the District of Columbia on August 3, 1961, and during the markup of the bill in executive session, modifications were made. I concurred in the modifications. Among the modifications made was the addition of the first section of the bill as it now reads.

This section would extend the provisions of the District of Columbia Unemployment Compensation Act to employees of certain nonprofit religious, charitable, educational, and humane organizations, with certain exclusions which I shall discuss later.

This is not a new departure in the field of social insurance. For several years the executive branch has advocated coverage of employees of such organizations under the Federal law. It was part of a number of amendments to Federal law submitted by the then administration to both Houses of Congress in 1959. The Ways and Means Committee of the House conducted hearings on those proposals in 1959, including the coverage of nonprofit organizations. This particular provision was not, however, included in the Mills bill, which became the Social Security Amendments of 1960, although the act moved in the direction of covering such employees by covering employees of so-called feeder organization, i.e., business operations owned by nonprofit organizations.

The proposal to cover employees of nonprofit organizations under the Federal law, which would result in their coverage under all State laws, is part of the program of the Kennedy administration, embodied in S. 2084.

The U.S. Department of Labor has for years recommended to the States that they cover such employees. Our two newest States, Alaska and Hawaii, do and have for some time compulsorily covered such employees.

I am informed that employees of virtually all nonprofit organizations are presently covered under old-age and survivors' insurance. In my considered judgment, their need for unemployment insurance is as great as for the protection afforded by the OASI program.

The workers who would be covered include a wide range of occupations, not distinguishable from those performed in presently covered employment. They are printers, typists, elevator operators, cooks, busboys, janitors, scrubwomen, as well as teachers, nurses and professional social workers. Many of them are employed in hospitals and it is estimated that about 40 percent of hospital workers are food, maintenance, and custodial workers. There are also many clerical workers in nonprofit organizations whose work is not essentially different from that of clerical workers in industry. Such evidence as is available indicates that employees of nonprofit organizations have a risk of unemployment as do presently covered workers. While certain professional groups in the nonprofit field may frequently have the protection of tenure and stable employment, with provisions for severance pay, this could be said of many presently covered workers. Other nonprofit organizations' employees, particularly in the nonprofessional occupations, are often low paid and have a high rate of turnover, which generally indicates unemployment.

I am advised that a substantial part of the funds of nonprofit organizations comes from sources other than voluntary contributions. Many such organizations sell goods and services in competition with profit-making organizations. Using hospitals as illustrative, since they employ a large portion of the workers who would be covered by the proposal, according to the U.S. Department of Labor, a study of one group of 85 nonprofit hospitals throughout the country indicated that only 10 percent of their revenue came from gifts and endowments, while about 70 percent represented payments by patients and their insurance carriers.

Making nonprofit organizations liable to pay unemployment compensation contributions would not change the special status they enjoy in regard to taxation generally. The traditional exemption they enjoy from revenue-raising taxes should not be carried over into programs not designed to raise general revenue but specifically designed for the protection of their workers.

The unemployed individual has the same need for income replacement whether his employer is a large industrial concern or a nonprofit organization.

The exclusions which I referred to are ministers, members of religious orders, and the handicapped in sheltered workshops. A sheltered workshop is defined in the bill as "a facility conducted for the purpose (i) of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or (ii) of providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market." The persons excluded are the clients of the workshop who are being rehabilitated or performing remunerative work in the workshop, but not the staff of the workshop, such as instructors, foremen, or clerical help.

In addition, the amendment to which I have just referred would not affect the act's present exclusion of students employed by their educational institutions, student nurses and interns, or individuals earning less than a specified amount.

Section 2 of the bill, as reported, defines insured work.

Section 3 of my bill, as reported, is a decided improvement in the law from the

standpoint of the employer, as it safeguards the experience rating of employers who, under it, will be permitted to make voluntary contributions to the fund. In passing, I might add, this feature of the bill received the endorsement of the Washington Board of Trade in testimony before the subcommittee. There was no testimony in opposition to this change presented to the committee.

Section 4 of my bill, as amended, sets the maximum weekly unemployment benefit in the District of Columbia at a level where the great majority of covered workers will be eligible for payments equal to at least one-half of their regular earnings. I should like to point out that the rapid rise in wages since 1954, when the present \$30 weekly maximum benefit was enacted for the District of Columbia, makes it imperative that the weekly maximum benefit be increased if we are to provide benefits reasonably related to the present wage levels.

The amendment provides that for each calendar year the maximum weekly benefit amount will be 50 percent of the average wage of covered workers in the District. This means that a new maximum weekly benefit amount would be established annually in accordance with the economic situation without the necessity of legislation. The District of Columbia Unemployment Compensation Board informs me that if this provision were presently effective, the maximum weekly benefit amount would be \$46.

I believe I speak for most, if not all, members of the Senate Committee on the District of Columbia, in expressing the very strong feeling that an increase in the maximum benefit in line with rising wages and living standards is imperative not only to assure an adequate benefit to the worker for loss of earnings, but also to assist the whole community, through maintaining the purchasing power of the unemployed.

The next section of the bill raises the number of weeks for which an eligible unemployed benefit claimant may receive payment from the present 26-week maximum to a 34-week maximum. I think it should be pointed out that during the period of unemployment the worker would be required to be able to work, to be available for work and to accept suitable work when offered to him.

While I certainly do not believe that a simple extension of the duration of benefits is the proper answer to all of the problem, I do feel that an additional 8 weeks of benefit payments, as proposed in the bill, would be of great assistance to many wage earners. The 8-week extension falls short of the 39-week provision contained in my original bill which had the distinguished support from labor representatives and within the committee, but in the considered judgment of the committee, it represents a step in the right direction beyond which it would be difficult to go at this time.

It is appreciated that there may be those who, in all sincerity, view with great caution the extension of benefits for the 34-week period. I personally believe that they are exercised over a scarecrow argument which will be found to have little substance in the actual operation of the program. I am convinced that eventually these men, with whom I have an honest difference on this point, will come to accept the 34-week duration as desirable. I hasten to add, Mr. President, that in reporting this bill to the Senate, the committee unanimously agreed upon this uniform 34-week extension.

The next section of my bill, as amended, eliminates the provisions in existing law which require the cancellation of benefits in those cases where individuals have been disqualified to receive benefits by reason of (1) the voluntary leaving of employment

without good cause, (2) discharge for misconduct in connection with the performance of work, or (3) refusal to accept suitable work without good cause. The result of the amendment will be the postponement of the payment of benefits for such period of time as an individual may have been disqualified to receive such benefits. The provision of the present law which calls for variable disqualification periods would be retained.

In testifying before the committee, the Board of Trade representative stated that the Board strongly favors denying benefits completely in the above-mentioned cases. The Board of Trade bill provided that such persons would be ineligible for benefits until they have returned to work and have been paid wages equivalent to at least eight times their weekly benefit amount. In my judgment, the Board of Trade position on this provision is dead wrong, as it perverts the purposes of disqualification from one of protecting the fund to one of penalizing the claimant.

The next section of the amended bill makes modification in the qualification required of a person, insofar as the wages received during his former employment are concerned.

Also, at the present time it is difficult to determine whether elderly individuals who have voluntarily retired are in the labor market and seeking employment. Accordingly, the bill includes a provision to prevent individuals who have voluntarily retired from employment without good cause and who have applied for or are receiving retirement to which the employer has contributed, from using wages paid them by such employer prior to retirement in the computation of a claim for benefits.

The last section of my amended bill contains two amendments designed to encourage unemployed workers to enter appropriate training programs in order to provide them with the skills necessary to prevent them from such frequent unemployment.

The first amendment would provide that unemployment benefits would not be denied to an otherwise eligible individual during any week in which he is attending an approved training course. The second amendment which complements the first would provide that benefits would be denied to individuals who refuse without good cause to accept a referral to an approved training course.

Provisions of this nature have been widely discussed, particularly on the House side, in connection with the considerations by Congress of the administration's manpower and training bill. This latter bill, as Senators know, has already passed the Senate and is awaiting action in the House. It is my understanding that there was considerable discussion on the House side concerning the incorporation of such provisions in the manpower and training bill itself. It was pointed out that Federal legislation in this area involves amendments to the Federal Unemployment Tax Act which falls within the jurisdiction of the Ways and Means Committee. That committee had before it the administration's proposal for such a provision in connection with improving the unemployment insurance system. It was, therefore, agreed that such a provision should not be incorporated in the manpower and training bill.

As I have stated, however, there is wide bipartisan support for such a provision. The supporters recognize that training programs for unemployed individuals are designed to improve their opportunities for employment so that they will be far less subject to unemployment. Such a result would have many beneficial effects. It would reduce the ultimate load on the unemployment compensation programs in the States. It would also be of the greatest economic benefit both to the community and the Nation in that

workers would become more productive members of society. They would not only produce more and better goods and services, but they themselves would have greater earnings which would put more money into circulation.

It seems obvious that it is far more desirable to place properly selected individuals in a training program when they are unemployed and eligible for unemployment compensation than to leave them idle.

There is a tremendous growing awareness in the States of the desirability of such a practice. Thirteen States and the District of Columbia already have laws which furnish assurance to unemployment compensation claimants that they will not be denied unemployment benefits if they undertake occupational training to which they have been referred by the unemployment service. It is an indication of the growing awareness of the importance of such training that eight of these States enacted such laws at their recent 1961 legislative sessions.

There seems little doubt to me that more and more employers in this country will recognize that proper training of unemployed workers is one of the best methods for keeping them off the unemployment insurance rolls.

In concluding my statement on S. 2194, I urge that the Senate pass the proposed legislation. It is for the most part the bill proposed by the District Commission. It comes to the Senate with the unanimous recommendation of the Senate Committee on the District of Columbia. It is not new legislation or theoretical legislation. Rather, in the best sense of the word, it is conservative legislation. It seeks to conserve, through renovation, sound principles of unemployment compensation, adopted over two decades ago, which are part of the American tradition of social legislation.

[From the Washington Post, Sept. 4, 1961]
FOR THE UNEMPLOYED

Congress has recognized that the District's unemployment laws are badly out of date, and revisions are underway. Characteristically, the House District Committee drew up a bill reflecting accurately the views of the Washington Board of Trade while the Senate committee's version is based upon the District Commissioners' requests. They agree only that the District's maximum benefit of \$30 a week is too low.

The Senate committee has done the better job. When the whole standard of living in the city rises, then unemployment benefits ought to rise with it. The Senators propose a floating maximum, set each year at half the average wage of the District's covered workers. Currently, that would be about \$47 a week. The House bill merely sets a flat \$38, an unhappy compromise. If the House meant it merely to keep step with inflation, their figure is too high. And if it is to keep step with the rise in the average wage here, which has gone from \$68 in 1954 to about \$94 today, then it is too low.

Between these two bills, the difference in cost is not sufficient to justify any vast anxiety among the employers whose payroll taxes will support the future compensation program. The Senate committee's bill would add another \$1.7 million to the \$5.2 million that the present program costs, where the House bill would add about \$1.3 million.

The Senate District Committee has also made two valuable additions to the Commissioners' draft. Its language would now make nonprofit institutions' employees eligible. And it would remove the absurd rule that prohibits unemployment payments to a person undergoing training in order to qualify himself for a job. The Senators went even further, authorizing the Compensation Board to cut off benefits to a person

refusing to take an appropriate training course. At a time when old skills more swiftly become obsolescent and new skills are increasingly in demand, this reversal of old policy is no more than commonsense.

The PRESIDING OFFICER. The committee amendment in the nature of a substitute is open to amendment. If there be no amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question now is on the engrossment and third reading of the bill.

The bill (S. 2194) was ordered to be engrossed for a third reading, was read the third time, and passed.

AMENDMENT OF SHIPPING ACT OF 1916

The Senate resumed the consideration of the bill (H.R. 6775) to amend the Shipping Act of 1916, as amended, to provide for the operation of steamship conferences.

Mr. KEFAUVER. I yield to the Senator from California for the purpose of the Senator from Wisconsin asking some questions of him.

Mr. WILEY. Mr. President, will the Senator from California yield?

Mr. ENGLE. I yield.

Mr. WILEY. I desire to ask the distinguished Senator from California a few questions relating to the opinion of the Department of Justice found at pages 30 to 37 of the committee report on H.R. 6775. I read the third paragraph on page 31:

Sections 3 and 4 of the subcommittee print depart radically from the version of H.R. 6775 which was unanimously enacted by the House of Representatives on June 12, 1961. The House legislation contained provisions in sections 1 and 2 (to which secs. 3 and 4 of the subcommittee print are roughly comparable) designed to protect competing carriers, shippers, and the general public from untoward effects of the use of dual-rate contracts by ocean shipping conferences. These competitive safeguards—the very heart of this legislation, in our opinion—have been eliminated, either directly or in effect, from the subcommittee print.

What is the answer of the distinguished Senator to that criticism?

Mr. ENGLE. The Department of Justice wanted in the bill the language which is proposed in an amendment to be offered by the distinguished Senator from Tennessee, which would replace certain House language. The language which the Senator from Tennessee wishes to reinsert in the bill reads: "is intended or will be reasonably likely to cause the exclusion of another carrier from the trade."

That is what the Justice Department is referring to in this paragraph. We struck out that language because the Maritime Board said to us that they could not authorize any conference with that language in the bill. It would exclude the conference system, because the conference system, when set up, may tend to cause an exclusion of some people from the trade. That is the purpose

of it. We make no bones about it. We simply say, "If you want the conference system, you have to leave that kind of language out. If you put that language back in, you might as well throw the bill in the wastepaper basket, because all you have done is march up the hill, authorize the conference system, and then marched back down the hill and deauthorized the conference system."

The Maritime Board came before us and said: "If you leave this language in the bill, you are not going to have any conference. The question is whether you want a conference system."

The answer to that question is plain to everyone. They all said they want the conference system. The shippers want it. The ship operators want it. The Maritime Board wants it. The foreign-flag lines want it. The State Department wants it. Everybody wants the conference system. If we put that language I have read back in the bill it will in effect deauthorize the conference system; it will negate the purpose of the bill. That is why we took the language out of the bill. That is the basis on which we will oppose the amendment of the Senator from Tennessee, to add the language to the bill. If we put that language in the bill we might as well throw the bill in the wastepaper basket.

Mr. WILEY. I thank the Senator. I now ask him to refer to page 33 of the committee report. I read from the top of the page:

The Department of Justice considers indispensable to any reasonable enactment on dual-rate and steamship conference agreements the inclusion of language unequivocally barring the approval of such agreements where they are intended or will be reasonably likely to cause the exclusion of another carrier from the trade. Assistant Attorney General Loevinger indicated in his testimony before the Merchant Marine and Fisheries Subcommittee on August 3, 1961, how important are the actual and potential benefits of this legislative protection to American carriers, shippers and the general public. Judge Loevinger noted that, even though at a given moment there may be no American carrier operating independently of the conferences, the ability of an American carrier to withdraw without fear of conference retaliation provides it with leverage within the conference which may be exerted to avert action which may be adverse to its interests or to the foreign commerce of the United States. This is of extreme significance to American carriers which account for only a small vote in virtually every important conference serving our foreign trade.

Does the Senator agree or does he disagree with that conclusion?

Mr. ENGLE. The first part of the paragraph refers to the barring of approval of such agreements where they are intended or will be reasonably likely to cause the exclusion of another carrier from the trade. That is precisely the language that I read in the amendment that is to be offered by the Senator from Tennessee. The remarks I made with reference to that language would apply in answer to that particular portion of what the Attorney General had to say.

The Justice Department does not support conference arrangements. It is

against conference arrangements. The language proposed by the Justice Department would defeat conference arrangements and would make it impossible to have conference arrangements. That is the reason I said in my opening remarks, as well as in the remarks that I made to our committee: We must decide whether or not we want a conference system. If we want the conference system, we must not do things which will deauthorize the conference system and destroy it.

The Justice Department's attitude is that if they cannot stop the bill they want to write into it a provision which will make it impossible for the conference system to work. What I said with respect to the language proposed in the amendment suggested by the Senator from Tennessee applies specifically to this paragraph.

They talk about the common carrier not being able to get out of the conference. The common carrier can get out of it. All it need do is to serve notice within the framework of the bill. They can get out of it if they want to. A common carrier can get out of it if it wants to do so.

Let me emphasize this point. There is not one American-flag line common carrier today who does not want to get into these conferences. The Isbrandtsen Line brought the suit in the Supreme Court, in which it was decided that the conference arrangement—and I said that conference arrangements have been in operation for almost 100 years—violated the antitrust laws. That decision has been held in suspension by repeated enactments by Congress since 1958. The Isbrandtsen Co. appeared before our committee and said that they wanted to get into the conference system and was ready to go along with it. No American-flag line common carrier today has indicated that it did not want to be a part of the conference system. All of the common carriers under the American flag want to get in. This bill applies only to common carriers.

Mr. KEFAUVER. Isbrandtsen is practically forced to get in. The statement that there are no American-flag carriers who do not want to work independently is not borne out by the record.

In my presentation I will show that there are 28 carriers who want to operate independently in at least one trade. Of course, some of these who want to operate independently may be in some conferences. I have a list here dated September 1 of this year which shows that at least one of the lines operates outside 28 conferences. I will be glad to show it to the Senator, if he wishes to see it.

Mr. ENGLE. I do not know of any flag line common carrier that objects to this proposed legislation.

Mr. KEFAUVER. I will show the Senator a list of 28 conferences in which at least one U.S. company wishes to operate independently.

Mr. ENGLE. If they wanted to operate independently, they should have come before the committee and opposed the bill. They have not done so. The

record is replete with the support of American flag lines for such legislation.

To reply to the Senator from Wisconsin, I answer in two parts. The first part applies specifically to matters just referred to with respect to the exclusion or possible exclusion of other lines. What I said about that was that that language simply deauthorizes the conference, because the Maritime Board has said that with that language in the bill, they cannot approve them.

With reference to the second point, if a line wants to get out, it can get out after giving 90 days notice.

Mr. WILEY. May I continue? I have a few more questions I wish to ask. I refer the Senator to the following paragraph on page 33. It is a part of the opinion of the Department of Justice.

It is important also to bear in mind that in the ocean trades competition is the only practical restraint on unduly high freight rates.

Then, beginning in the fourth paragraph on page 33, we read:

For the reasons outlined above, we urge the committee to delete the provision appearing in the subcommittee print beginning at line 22 on page 5, which completely nullifies the protection for nonconference carriers contained in the House-passed version.

What is the Senator's comment on those statements?

Mr. ENGLE. My comment on the first sentence is that competition is not the only restraint; that in the bill we provide that if any conference establishes a system of rates which is discriminatory, unfair, against the public interest, or detrimental to the foreign commerce of the United States, the Federal Maritime Commission will disapprove of that conference. So the conference must work within the framework of reasonable rates and reasonable procedures. If it does not, then the Maritime Commission is authorized to break up the conference by demanding that the American-flag lines pull out.

It must be remembered that the United States has no power to export the regulatory procedures of our Government. For instance, we cannot apply a rate structure procedure to foreign lines; they simply would not submit to it. I read earlier a list of 12 nations which have made it very plain that they will not put up with the United States establishing a rate procedure such as we have for the railroads, which are all domestic, or for bus lines or for any of the other several types of domestic carriers. But we have gone as far as we can go in saying that when a conference establishes a rate structure which is discriminatory or unfair to shippers or as between ports or is adverse to the trade of the United States—for instance, the conference might provide for a higher rate going out than the rate coming in—the Commission can stop it.

We have provided a limited or qualified monopoly system. There is no question about it. I call it a qualified monopoly, because ordinarily a monopoly excludes everybody. The bill provides that every shipping line that wishes to do so may enter the conference. It is

open-ended. Anybody can get into it on the same basis as those already in it; but even after they get in, if the conference does not establish fair rates, if it establishes rates which are discriminatory or against the public interest, the Commission has the power to pull the American-flag lines out. That would break the conference. That is my answer to what we have provided.

The latter part of the Senator's comment refers to some language in the bill which I would have to locate in order to comment on it specifically. Apparently the Attorney General was referring to a committee print different from the one which finally came from the committee. It is difficult for me to identify the particular language to which reference was made. However, I shall be glad to look it up and answer the Senator subsequently, after I have had time to find the language.

Mr. WILEY. I suppose the Senator does not agree with the conclusion set forth of the opinion, as appears on page 34 of the report:

We believe that the House approach is the more reasonable. It places the burden where it belongs, that is, upon the proponent and expected beneficiary of the proposed dual-rate contract.

I assume the Senator does not agree with that statement.

Mr. ENGLE. No, I do not. Let me say why. The House version approached the problem backwards. Instead of directly authorizing a conference system and providing conditions, it said that conferences were not authorized except "as follows," and so forth.

We turned it around and put the case in the affirmative; we authorize the conference system and set up the conditions.

Mr. WILEY. Another paragraph in the Attorney General's opinion, on page 34 of the report, reads:

Another provision deleted from the House enactment which should be reinstated is that precluding any requirement that shippers divert their shipments from natural routings. The purpose of this provision was to insure shippers freedom to choose the ports from which and to which to ship their goods. It is one thing for Congress to permit a system of contracts under which shippers must promise that when they ship from a particular port they will use conference vessels, but it is a wholly different thing to permit conferences to compel shippers to ship from a particular port when it may be more economical for them to ship from other ports which the conferences may not happen to serve. The Department of Justice recommends that the House provision on this point be reinstated in H.R. 6775.

What about that statement?

Mr. ENGLE. We simply require the shippers to use the conference lines routes when the conference lines have the capacity and the space available. If the space is not available, then the shippers do not have to use those routes, and they may be freed immediately from that requirement. The Senator will find that reference on page 11 of the report:

In addition, no contract could be approved unless it expressly—

(a) permitted prompt relief of the contract shipper with respect to any shipment

for which the contract carrier or conference could not provide the space he needs on reasonable notice.

In other words, if a conference agreement were established in which the shipper said he would ship his goods with the conference, at conference rates, and he examined the schedules with reference to what the conference provided with respect to cargo and tonnages, if the conference could not provide the shipper with the service, he would have a right under this provision to get out. I think the committee took care of the Attorney General's complaint in that respect.

Mr. WILEY. The fourth paragraph of the Attorney General's opinion, on page 35 of the report, reads:

Clause 5 of section 3 of the subcommittee print permits the approval of dual-rate systems where the maximum spread between contract and noncontract rates is 15 percent. We view any spread in excess of 10 percent as unwarranted. In this connection, it should be noted that the House report indicated a problem in determining a maximum spread figure which would not penalize a shipper who does not choose to limit his shipments to conference vessels and which at the same time would provide a reasonable inducement to execute such agreements.

Why was the 5 percent added?

Mr. ENGLE. The 5 percent was not added. The Attorney General favored a 10-percent spread. Let me describe exactly what happened. A dual-rate system is provided for. Dual rate means that a lower rate is provided for shippers who agree to ship all, or substantially all, of their commodities within the conference.

The other rate is a higher one. So, actually, the shipper gets a lower rate if he commits himself to ship with the Conference. That leaves two rates—the rate paid if there is no agreement to ship a substantial part of the goods, and the rate if there is such an agreement. What is the spread between them? The spread provided by this measure is 15 percent. Some may argue that it should be 10 percent; some may argue that it should be 20 percent. But the committee examined the entire situation, and arrived at the 15-percent figure on the basis of the information which appears on page 14 of the report, as follows:

Of the 62 dual-rate conferences serving U.S. ports in 1959, 21 expressed their spread between contract and noncontract rates in percentage figures (showing the percentage above the contract rate of the noncontract rate). Of the 21, 18 were using a 20-percent spread; 1, 15 percent; and 2, 10 percent. [See Hearings Before Antitrust Subcommittee of Committee on the Judiciary, House of Representatives, on Monopoly Problems in Regulated Industries; Ocean Freight Industry, 86th Cong., 2d sess., pt. 1, vol. 1, at 740-741 (1959).]

In short, one group had 20 percent; one group had 10 percent. We provide for 15 percent.

Mr. WILEY. The Department of Justice is convinced that it is not in the public interest to have agreements which may create a monopoly in connection with such shipments. Does the bill as reported create a monopoly?

Mr. ENGLE. It creates what I call a semimonopoly or a qualified monopoly.

Such semimonopolies, in one form or another, have been in existence since 1877. Every study made of this subject—and there have been numbers of them; the first was in 1909, by a royal commission of the British Government, which investigated all this conference business; and in 1912 there was the so-called Alexander committee hearings; and there were the hearings with reference to the 1916 Shipping Act; and there were hearings with reference to the 1936 Shipping Act—every one of them arrived at precisely the same answer; namely, that in the area of a common carriers in the international maritime business, there cannot be stability within the industry without having a conference system; and the alternative is to go into a rate war, which ends with the big ones swallowing the little ones, and then there is a worse monopoly situation than ever.

In other words, every study made of this subject, over a period of more than 50 years, has arrived at precisely the same answer, which is exactly opposite to what the Attorney General has stated.

So we disagree with the Attorney General; let there be no question about that. That is the issue before the Congress in connection with this legislation. The State Department, the Department of Commerce, and the Maritime Commission all support this legislation. The Department of Justice does not like it, because it proceeds to authorize a quasi-type monopoly operation.

We assert that history and 50 years of study have shown there is no other sensible way to proceed. We think it important not to let these people run hog wild and set rates any way they want to. That is why we have provided for control of this situation by the U.S. Maritime Commission, a public agency which is charged with acting in the public interest; and under our bill, it will have the responsibility of pulling out the American flag lines whenever any of the things listed on page 11 of the report are done. A contract cannot be approved if the Commission finds the contract—

(a) Detrimental to the commerce of the United States; or

(b) Contrary to the public interest; or

(c) Unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors.

In addition, no contract could be approved unless it expressly—

(a) Permitted prompt release of the contract shipper with respect to any shipment for which the contract carrier or conference could not provide the space he needs on reasonable notice,

(b) Provided that rates shall not be increased for a reasonable period, in no case less than 90 days, except in case of war or other force majeure,

(c) Covered only those goods of the contract shipper as to which he has the legal right at the time of shipment to select the carrier,

(d) Limited liquidated damages to what would be due at the contract rate on the particular shipment, less cost of handling,

(e) Permitted the shipper to terminate on 90 days' notice,

(f) Provided for a reasonable spread between contract and noncontract rates, in no event more than 15 percent of the noncontract rate,

(g) Excluded from the coverage of the contract, cargo loaded in bulk without mark or count, and

(h) Contained other appropriate provisions required by the Commission.

So the Maritime Commission will have power to impose even more regulations.

I am saying that although by means of this measure there will be established and specifically authorized a conference system with quasi-monopolistic features—quasi, because any common carrier can get in on the same basis with any other common carrier—nevertheless, in order to protect the public interest and keep the concerns in the conference from robbing the shippers or discriminating between ports, and so forth, we have provided that the U.S. Maritime Commission, a public agency, shall have the direct responsibility of seeing to it that the actions listed are not taken.

What is the difference between such an arrangement and the arrangements made in connection with the railroads and the airlines and the buslines in the United States today? Such arrangements must be made. The railroads have a monopoly, and there are monopolies in a great many other fields. And the railroads and the other groups are subject to regulation.

The problem of dealing with international shipping is that we cannot force the foreign-flag lines to accept American law. All we can do is provide "If you get out of line, and start robbing the public, we will require our Maritime Commission to pull out the American lines and break up the conference." That is the only power we have.

Mr. KEFAUVER. But there is a great deal of difference between that and the right of the Interstate Commerce Commission to regulate the railroads and the right of the Civil Aeronautics Board to regulate the airline transportation. The main thing they do is set the rates. But under this measure, the Maritime Commission would not have any power to set the rates.

Mr. ENGLE. How could our Government do that? Let the Senator from Tennessee explain how our Government could do that.

Mr. KEFAUVER. I shall explain.

As a matter of fact, at no time in the history of the Maritime Commission has any agreement ever been knocked out because of excessive rates, although there is ample clear proof to the effect that there have been many cases of excessive rates and complaints about the rates.

What can be done is adopt the language voted by the House, to the effect that no conference shall set a rate unreasonably high or unreasonably low. But the Senate committee deleted such language.

The main power of regulatory agencies is the power to set rates. But such a provision is completely absent from the Senate committee's version of the bill; and thus the American shipper would have no protection whatever, rate-wise.

Mr. ENGLE. Mr. President, will the Senator yield so I may comment on that last remark?

Mr. KEFAUVER. Yes.

Mr. ENGLE. I wish to comment on the matter of setting rates. We can set the rates for concerns doing business in this country. We have jurisdiction to do that. We can set fares for air lines operating in this country, but we cannot set fares on international lines. We cannot do it; that is all there is to it. The other countries are not going to subject their flag lines to that kind of regulation. I gave a list of the countries that have stated they will not do it.

Mr. KEFAUVER. Mr. President, if the Senator will yield, he will find that the CAB sets the fares on international airlines landing in this country.

Mr. ENGLE. They cannot do it.

Mr. KEFAUVER. Whether they can or not, they do it. I will give the Senator the places and references where they do it.

Mr. ENGLE. We have statements from the State Department and representatives from the flag lines themselves. They simply will not accept the idea of American boards setting these rates. We are dealing with an international business. We are not dealing only with our own lines exclusively. As a consequence, we must enter into an arrangement which makes it possible for the conferences to operate on a voluntary basis, and include foreign nations.

Mr. WILEY. Mr. President, will the Senator yield?

Mr. ENGLE. I yield.

Mr. WILEY. One particular point which has been discussed concerns me very much. For instance, if we want to ship some cheese to Genoa, we pay \$6.38 per hundredweight, and they pay back to America \$6.84 per hundredweight. My whole thought is that in a bill such as is under consideration we are trying to get at a situation which is very unhealthy at the present time. Our exports are dwindling. We find the charges we have to pay for exports are sometimes twice what are paid for imports. I presume this question has been examined by the distinguished Senator. If the Senator will refer to page 37—

Mr. ENGLE. Let me comment on that particular matter. We have included that authority in the power of the Commission. As I have said, we cannot put American regulatory bodies in the business of setting international shipping rates, because foreign countries will not accept it; but where they are unfair, discriminatory, or adverse to the foreign commerce of this country, the Commission has the authority and is directed not to approve the conference, but to disapprove it.

Mr. WILEY. I refer to page 37 of the report:

The Department of Justice also recommends the deletion of section 7 of the subcommittee print. This section would permit serious inroads to be made upon the confidential relationship between shippers and carriers established by section 20 of the 1916 Shipping Act.

I wonder what, if any, action was taken with reference to that recommendation.

Mr. ENGLE. Let me say this while we are getting section 7, so the specific

language will be before me. As a result of the reprinting of the bill, there is a different alinement than that which was referred to in the Attorney General's letter.

Here is the problem with reference to the matter of asking shippers to supply data.

The House bill provided that foreign ship lines would be required to designate an agent who would be required to supply data with reference to all the contracts and shipping operations of the foreign lines. This is precisely what the State Department and the foreign countries to whom I referred objected. They said they would not permit their citizens to subject themselves to the jurisdiction of the U.S. Federal Maritime Board. As a consequence, they vigorously protested any effort on our part to give extraterritorial force and effect to American law.

What they are saying is that they will not permit their flag lines to supply information to American regulatory agencies.

On page 19 of the report, the last paragraph, at the bottom of the page, relating to section 6—these sections have been changed, as I indicated before—reads as follows:

To this provision we have added two clauses which should make it more acceptable to the Department of Justice. The Department pointed out that as passed by the House this provision would allow conference carriers to solicit and receive the specified information from freight forwarders, terminal operators, and other persons subject to the act, but that such "other persons" would not be immunized from the proscription of those portions of section 20, Shipping Act, 1916, which are not amended by this act. Accordingly, your committee added the phrase "or by any other person subject to this act," to the pertinent portion of the section. In addition, we added a special protective provision that "the use of such information for any other purpose prohibited by this act or any other act shall be unlawful."

That is the end of the quotation of the section.

Mr. WILEY. Is it the opinion of the Senator that the bill as the committee reported it makes for competition or eliminates competition?

Mr. ENGLE. In my opinion, the bill would have a tendency to limit and restrict destructive competition. There is no question about that. The kind of competition we are trying to eliminate is the cutthroat competition in ocean-borne trade which would make it impossible for shipping lines to maintain regular rates and routes, and would cause the big lines to swallow the little ones and result in a worse monopolistic situation. As a matter of fact, when the Royal Commission reported on this problem in 1909, that is exactly what it said.

I am not in favor of monopolies. I usually side with the distinguished Senator from Tennessee on the question. However, I do not know of any other way to handle international shipping than by following the procedure which has been in effect for nearly 100 years.

We are trying to put a regulatory force on top of these conferences to the extent

we can execute American law. In my opinion, we have gone as far as we can go and have a conference system at all. The question is raised again, "Do we want a conference or not?" Every agency that has studied the problem for over 50 years has said we should have one.

I assure the Senate the legislation goes just as far as we can go in maintaining regulatory power over the conference system.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. ENGLE. The Senator from Tennessee has been very kind in yielding to me, and I am glad to yield back to him.

Mr. KEFAUVER. The House sent to the Senate a workable bill, with a minimum amount of protection.

Mr. ENGLE. Mr. President, will the Senator yield on that point?

Mr. KEFAUVER. I will yield in a moment. There was a minimum amount of protection provided for the shippers. All that protection has been removed from the Senate bill.

Mr. ENGLE. Mr. President, will the Senator please yield?

Mr. KEFAUVER. The Senator said that the Senate bill went as far as it could in trying to regulate and to treat fairly American shippers. I think the Senator is badly mistaken about that. Never in the history of the Maritime Administration has any conference been set aside because of excessive rates.

The Senator talked about aviation. I shall have the citation in a little while, but I merely say the IATA suggests rates, and then our law provides that the Civil Aeronautics Board must specifically approve or disapprove of the rates. The CAB has the right to disapprove, if the rates are unreasonable. The Senator even took out the little provision that the Maritime Board would have the right to disapprove any rates if it found them to be unreasonable. Even that small protection was taken out.

In connection with international shipping, we should certainly protect the independent carriers and the American shippers, in my opinion. Substantially all the protections have been removed.

Does the Senator wish to have me yield for a question?

Mr. ENGLE. Yes. I should like to make a comment. The Senator says that some provisions of the House bill were removed. The reason we removed the provisions which were in the House bill was that we were informed by everybody associated with the proposed legislation that we might as well throw the bill in the ash can if we kept those provisions in the bill.

Mr. KEFAUVER. I have read the hearings.

Mr. ENGLE. Will the Senator yield, to let me go further?

Mr. KEFAUVER. I wish to challenge that statement.

Mr. ENGLE. I hope the Senator will let me finish.

Mr. KEFAUVER. Mr. Grant Arnold, the chairman of the Special Committee on Study of the Shipping Act of 1916, suggested amendments. One of the amendments he suggested referred to

the taking out of the antitrust provisions.

Mr. Thomas E. Stakem, the Maritime Administrator, said the House amendments would be difficult to handle, but, if I read his testimony correctly, he did not say the House bill would be worse than no bill.

In the hearings held by Representative BONNER, a great many shippers objected to the dual rate provisions. Even in the hearings held by the Senator from California, the representative of the Pacific Coast Coffee Association was very critical, as the Senator knows. Mr. J. Richard Townsend, counsel for the Pacific Coast Coffee Association, objected to the Senate bill and said that the House bill should be passed because it had some protections for American shippers.

Mr. ENGLE. The Senator's statement is correct about the counsel representing the Pacific Coast Coffee Association, but the great majority of the shippers are in favor of the proposed legislation. The distinguished chairman of the Committee on Commerce has a stack of telegrams he has received from various industry groups throughout the country. I wish to make it clear, if the Senator will be kind enough to yield once more, that we tried to make the bill which came to us from the House acceptable not only to the shipping industry and to the shippers, but also to the State Department, to the Department of Commerce, and to the Maritime Administration. They came in and said, "We cannot live with this bill." That is what they said. I said, "Why can you not live with it?" They said, "Because it is an attempt to give extraterritorial force to the antitrust laws and regulatory procedures of this country, and the foreign flag lines will not take it. The foreign governments will not take it." I said, "What would you do to get a conference? We cannot mandamus the foreign lines to come in."

We had to come up with a proposal which would be accepted voluntarily for participation. That is precisely what we did. We took out the extraterritorial force of the antitrust laws and domestic regulation. Then we provided, in addition to the arrangement under which the conferences would be affirmatively approved and legalized, that nevertheless the Maritime Administration would be required to see that the conferences were run in the public interest and not with discriminatory rates or procedures.

Mr. KEFAUVER. May I answer the Senator?

Mr. ENGLE. That would be true in all respects, I say to the Senator.

Mr. KEFAUVER. Which member of the Maritime Administration said they could not live with this bill? I cannot seem to find that.

Mr. ENGLE. That was the import of the testimony.

Mr. KEFAUVER. Which one said it?

Mr. ENGLE. This was the import of the testimony.

Mr. KEFAUVER. I cannot find where it was said they could not live with the bill.

Mr. ENGLE. I would not say that precise language was used.

Mr. KEFAUVER. What language was used.

Mr. ENGLE. All three of these agencies support the bill now before the Senate, the bill the committee reported. The committee voted unanimously to report the bill to the Senate.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. KEFAUVER. I had agreed earlier to yield to the Senator from Virginia [Mr. BYRD].

Mr. MAGNUSON. I merely wished to have printed in the RECORD at this point, by unanimous consent, the statement of the Honorable Thomas E. Stakem, Maritime Administrator, shown beginning on page 45 of the hearings.

Mr. KEFAUVER. I yield for that purpose, but I ask unanimous consent that, following, there also be printed the statement by J. Richard Townsend, counsel for the Pacific Coast Coffee Association, as shown beginning on page 129 of the hearings.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

STATEMENT OF THOMAS E. STAKEM, MARITIME ADMINISTRATOR AND CHAIRMAN OF THE FEDERAL MARITIME BOARD

Mr. STAKEM. Thank you, Mr. Chairman.

Mr. Chairman, my statement is short. Knowing the committee has a short time in which to hear a lot of witnesses, I think I can get by within my time allotted.

The Federal Maritime Board appreciates this opportunity to appear before your committee and to testify on H.R. 6775. I understand that the committee has a number of witnesses scheduled to testify today and accordingly shall make this statement as brief as possible and touch on the highlights of the bill.

The first section of H.R. 6775 deals with dual rates. This portion of the bill while designed to legalize dual rates, imposes certain standards in connection with their approval. Thus H.R. 6775 requires that before any dual rate system may be approved the Board must find with respect to such system:

(a) That the system is not intended to cause the exclusion of any other carrier from the trade (p. 2, lines 10-12).

(b) That the system will not be reasonably likely to cause the exclusion of any other carrier from the trade (p. 2, lines 11-12).

(c) That the system will not be detrimental to the commerce of the United States (p. 2, line 13).

(d) That the system will not be contrary to the public interest (p. 2, line 14).

In addition, it would require the Board to withdraw permission as to any system if it finds—

(e) That the system tends to cause the elimination from the trade of any carrier (p. 3, lines 21-22).

(f) That the system prevents the entry into the trade of any carrier (p. 3, lines 21-22).

These general standards obviously overlap to a great extent, and yet the inclusion of each by specific mention in a legislative enactment creates the presumption that each has a separate and distinct meaning. The multiplicity of these standards and limitations and the difficulty of allocating separate significance to each one will make for confusion and much litigation.

In addition to these general standards, the bill requires that every dual-rate system shall conform to the seven specific requirements enumerated from page 2, line 15, through page 3, line 15.

These specific requirements are effective curbs upon the competitive impact of the dual-rate system. In addition, the Board is authorized by clause (8) (p. 3, lines 15-17) to require other provisions, not inconsistent with the rest of the section, to be inserted in any dual-rate system.

We believe that these seven specific requirements, together with such other limitations as may be required by the Board under the authority of clause (8), sufficiently insure against the use of any unfair or coercive system.

We believe that it is unnecessary in addition to prohibit expressly any system which is intended to cause the exclusion of any other carrier, or which will be reasonably likely to cause the exclusion of any other carrier, or which will be detrimental to the commerce of the United States, or which will be contrary to the public interest, or which will tend to cause the elimination from, or prevent the entry into, the trade of any carrier.

The accumulation of all of these separately articulated standards would present a difficult problem to the officials responsible for administering the statute.

We favor legalization of the dual-rate system because we have found it to be necessary at times to prevent instability and chaotic rate competition between conference and independent.

We believe that the hearings of the House Merchant Marine and Fisheries Committee over the past 2 years prove that such legalization is favored as well by shippers and receivers of cargo, and by the steamship industry.

Given this general consensus of opinion, we feel that there is a clear call for legislation effecting a legalization of dual rates. The multiplicity of standards established in the bill, however, may mire down applications for permission to use the system into such lengthy litigation as to make the stabilizing effects of the system available, if available at all, only after long delay.

And, finally, even after a system is ultimately permitted, it might be so watered down as to lose its effectiveness as a control over destructive rate competition.

The balance of H.R. 6775 makes certain amendments and additions to the Shipping Act, 1916, generally designed to strengthen the act and make it more effective. Two points therein merit comment at this time.

At page 6, lines 14 through 19, H.R. 6775 appears to establish a mandatory requirement that every conference agreement shall contain effective provisions for policing the obligations under it. It is not clear whether such provisions provide for policing by the members themselves, by the Federal Maritime Board, or by some other body. Presumably, however, this means some form of self-policing. Clarification of this point would be desirable. Assuming that it refers to a system of self-policing, it is suggested that some discretion should be allowed the Board as to the form of system to be used.

Section 7(c) of H.R. 6775 authorizes the Board to make such rules and regulations as may be necessary to carry out sections 14, first (b), 15, 18(b), 19(b), 20, and 21 of this act. The limitation of the Board's rulemaking authority in aid of these specifically named sections may imply an absence of such authority in aid of other sections of the act.

The Board believes that it has such general rulemaking authority, although the Shipping Act does not contain an express grant thereof. We believe that an express grant of such general authority is desirable.

Finally, we should like the record to show that the Federal Maritime Board and the Secretary of Commerce submitted to the House Merchant Marine and Fisheries Committee additional recommendations for the enactment of several largely procedural provisions which we believe to be essential to the adequate and effectual administration of the substantive provisions of the Shipping Act.

These recommended amendments, however, have not been included in H.R. 6775 as it passed the House. The Board will submit to the Congress draft bills covering the points in question so that further consideration can be given on the merits of each recommendation.

The Bureau of the Budget advises there is no objection to the submission of this statement from the standpoint of the administration's program.

Senator ENGLE. How soon, Mr. Stakem, can you have the draft bills available for the committee?

Mr. STAKEM. Yes, we do have them.

Senator ENGLE. Do you have them with you?

Mr. STAKEM. Not with me.

Senator ENGLE. How soon can you have them up here?

Mr. STAKEM. The complete language of the drafts is included in the House hearings. Whether they have been actually put in the form of a bill, I do not know. But it would be a matter of a very short time, Mr. Chairman.

Senator ENGLE. Senator BUTLER.

Senator BUTLER. I have no questions at this time.

Senator ENGLE. Thank you very much for your statement, Mr. Stakem.

If we have a choice between letting this law die and extending it, which do you prefer we do?

Mr. STAKEM. If the choice is between this bill and no bill, which would leave the dual rate systems high and dry, we would say this bill.

If the choice is between this bill and interim legislation for a continued period of study, we would favor the interim legislation.

Senator ENGLE. When you say "interim" you do not mean a long time?

Mr. STAKEM. One year.

Senator ENGLE. Thank you very much.

Thank you for your statement.

Our next witness is Mr. Edwin M. Martin, Assistant Secretary for Economic Affairs, Department of State, Washington, D.C.

Mr. Martin?

STATEMENT OF J. RICHARD TOWNSEND, COUNSEL, PACIFIC COAST COFFEE ASSOCIATION, SAN FRANCISCO, CALIF.

Mr. TOWNSEND. I have a very short statement, Mr. Chairman, that I would like to make. It will take about 10 minutes.

My name is J. Richard Townsend, I am an attorney in San Francisco and am attorney for the Pacific Coast Coffee Association, for which I am appearing today.

The Pacific Coast Coffee Association is a trade organization composed of 70 firms engaged in the importation, sale, or manufacture of coffee on the Pacific coast. Its members constitute practically the entire coffee industry on the Pacific coast.

Coffee is the leading import to the Pacific coast of the United States in dollar value. This coffee is imported principally from Brazil, Colombia, and the west coast of Central America and Mexico.

The Pacific Coast Coffee Association and its members have a very great interest in the dual rate legislation that is under consideration, since the dual rate system applies in three of the four principal trade routes of coffee to the Pacific coast.

Mr. Edward Bransten, chairman of the steamship committee of the association, and I have testified three times at hearings before House committees concerning this legislation, twice before a subcommittee of the House Merchant Marine Committee and once before the Antitrust Subcommittee.

Mr. Bransten is presently in Central America on business and is unable to be here today, so I have been asked to present the views of this association concerning H.R. 6775.

In his earlier testimony, Mr. Bransten pointed out in detail the serious adverse effects of the present dual rate system on the Pacific coast coffee roasters and importers. In the coffee trades to the Pacific coast that employ the dual rate system, the exclusive patronage agreements are signed by the receivers of coffee in this country, and such agreements cover coffee exclusively.

There is absolutely no nonconference competition in the trades which employ the dual rate system on coffee to the Pacific coast. At the present time, therefore, the coffee receivers on the Pacific coast have absolutely no bargaining position concerning the contents of the dual rate agreements, and they have no statutory assistance in that respect under the present law.

They are compelled to enter into any dual rate agreement that the conference places before them because, for competitive reasons, they cannot pay the noncontract rates, which are \$3 per ton higher than the contract rates in these trades.

The result of this has been that the dual rate agreements in these trades place very heavy obligations on the receivers of coffee, and practically no obligations on the carriers. Because of this monopolistic situation, the dual rate conferences have been able to disregard the interests of the Pacific coast coffee industry in the matter of rates and steamer service.

The matter of freight rates is discussed in detail in our earlier testimony. Suffice it to say here that the action of these dual rate conferences has placed the Pacific coast coffee industry at a competitive disadvantage with respect to the matter of freight charges.

The effect of the present dual rate system on steamer service is likewise very detrimental to the Pacific coast coffee industry. Although the steamship lines assert that the dual rate system results in improved steamer service, the experience of our industry has been exactly the opposite, in two respects.

In the first place, the sailings of the different conference lines are not staggered. The lines follow each other into port, apparently for fear that one line will secure more cargo than another. The result is that the steamer sailings are bunched together, and then there is a considerable gap before additional sailings.

In the second place, for their own convenience the conference lines do not adhere to their published schedules, frequently changing announced vessel schedules for as much as 1 or 2 weeks. This creates very serious inventory problems for the coffee industry. Detailed testimony has previously been presented concerning the deficiencies of the steamer service in these dual rate trades.

The steamship conferences have disregarded requests to correct these rate and service situations. In the case of one important dual rate conference, there is not even anyone in authority in the United States with whom problems of the coffee receivers can be discussed. That conference operates from the west coast of Colombia to the Pacific coast of the United States, and its headquarters are in Cristobal, Panama Canal Zone, which is neither a point of origin nor a destination in the trade.

I desire to emphasize that under the present state of the law the Pacific coast coffee receivers are helpless to do anything about this situation. They have no outside steamship competition to which they can resort for assistance. The present statutes afford them no protection of any substance.

It is certainly not in the best interests of the foreign commerce of the United States

that a situation such as this be permitted to continue. Two different committees of the House have been investigating the dual rate situation and holding hearings on this subject for more than 2 years last past. All of the interested parties have had a full opportunity to present their views and to suggest language which should be included in a statute that would authorize the use of the dual rate system.

We have taken advantage of this opportunity to offer specific suggestions to those committees, and many others have likewise made suggestions.

On the basis of such extensive investigations and hearings, the House Merchant Marine Committee, in cooperation with representatives of the Antitrust Subcommittee, has devised H.R. 6775, and this bill has been passed by the House.

The position of the Pacific Coast Coffee Association with respect to H.R. 6775 may be summarized briefly as follows: We believe that H.R. 6775 contains the very least protection that shippers and receivers of freight in this country are entitled to have against the tremendous power of a steamship conference which employs the dual rate exclusive patronage system.

In our opinion this is a good bill and it will go far toward eliminating the problems which have herefore existed under the dual-rate system. We believe that the shippers and receivers in this country should not be required to continue to operate any longer under the unregulated dual-rate system that has heretofore existed. Moreover, the continuance of such unregulated dual-rate system is contrary to the best interests of our foreign trade.

We believe that H.R. 6775 should be enacted promptly in its present form. If there are any aspects of this bill, such as the matter of requiring information from foreign steamship lines, which require further consideration, in our opinion these matters should be considered after the bill has been enacted, as possible amendments thereto.

We are strenuously opposed to the postponement of the protective features of this bill for another year or two while other provisions of the bill are being given further consideration.

After all of the investigations and hearings and all of the work that has gone into this matter, we believe that it would be most unfortunate and unfair to the shippers and receivers of freight in this country if they are to be compelled to continue to endure the abuses that are inherent in the existing dual-rate system for another year or two while certain aspects of the bill are reconsidered by the Senate.

The Pacific Coast Coffee Association hopes, and respectfully requests, that H.R. 6775 be enacted promptly, so that it will not be necessary to continue the existing unregulated system in effect and so that the shippers and receivers of cargo will have the protection against the powerful dual-rate conferences to which they have been found by the House committees to be entitled.

Mr. Chairman, with respect to a time schedule may I just add this: We hope that permanent legislation can be enacted by June 30. If this is impossible, we believe that any extension of the interim legislation should be for not more than 60 days, and that permanent legislation should be enacted during this session of Congress.

Our fear is that if all of the conflicting views are reconsidered, another 2 or 3 years will be consumed, and even then probably no one will be any more satisfied than today. And in the meantime the shippers and receivers of cargo will suffer the abuses of the present dual-rate system.

We believe that it is much better to enact H.R. 6775 promptly and then amend the law if experience shows that amendments are necessary.

These are our views in spite of the fact that not all of our suggestions were included in H.R. 6775.

We desire to thank this committee for the opportunity of expressing our views to it.

Senator ENGLE. Thank you, Mr. Townsend. You can be perfectly sure of one thing, that I am not going to sit through 13,000 pages of testimony.

Please express our appreciation to Mr. Bransten, who I know has given this problem very careful consideration over a long period of time.

Mr. TOWNSEND. Thank you, Mr. Chairman. Senator ENGLE. We appreciate your coming in on such short notice.

Mr. TOWNSEND. Thank you. Senator ENGLE. The next witness is Mr. T. R. Stetson, director of exports, United States Borax & Chemical Corp., Los Angeles, Calif.

The Chair would like to say that we are trying to get to the witnesses from the far-away places.

Mr. Stetson, can you complete your statement in 5 minutes?

Mr. WILEY. Mr. President, it is imperative that these conferences which have been discussed do not acquire so much power that they injure American industry. That is the purpose of some of my argument today. We must take into account, in making our decision, the question whether these conferences, which are simply a gathering together of various shipping companies, should be granted unfettered authority to set rates by common agreement.

I realize that it is claimed that we cannot interfere with these foreign companies. Why not? They come to our ports. They get the benefit of our merchandise. All we are interested in is to see that we get a fair shake in shipping our merchandise out.

I ask unanimous consent that following my previous remarks there be printed in the RECORD the Attorney General's opinion found at pages 30 through 37 of the committee report.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY
ATTORNEY GENERAL,

Washington, D.C., August 16, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: We have been furnished by Mr. Webster, counsel for the committee, with the subcommittee print of H.R. 6775, dated August 8, 1961. Mr. Webster informed us on August 3, 1961, that the Department of Justice's comments on this print of the bill would be desired by your committee. Accordingly, we are pleased to submit the following report on the subcommittee print.

H.R. 6775 would amend the Shipping Act, 1916, as amended (46 U.S.C. 801 et seq.), in various respects. The comments which follow are directed to the provisions of the subcommittee print of the bill intended to effect changes in existing law which are of serious concern to this Department.

Section 3 of H.R. 6775 would amend section 14 of the Shipping Act by adding a new section 14b which would require the Federal Maritime Board (hereinafter referred to as "the Board") to permit the use by any common carrier or conference of carriers in foreign commerce of any contract which provides lower rates to shippers or consignees who agree to give all or any fixed portion of their patronage to such carrier or conference, if such contract would not have certain pro-

scribed effects and if it meets requirements enumerated in the bill. The effect of enactment of section 3 would be to sanction the use in the ocean shipping trades of the exclusive patronage contract/noncontract rate system, more frequently referred to as the dual-rate system.

Section 4 of the bill would amend section 15 of the Shipping Act which deals with Board approval of agreements between carriers. The principal changes concern conference agreements.

Sections 3 and 4 of the subcommittee print depart radically from the version of H.R. 6775 which was unanimously enacted by the House of Representatives on June 12, 1961. The House legislation contained provisions in sections 1 and 2 (to which secs. 3 and 4 of the subcommittee print are roughly comparable) designed to protect competing carriers, shippers, and the general public from untoward effects of the use of dual-rate contracts by ocean shipping conferences. These competitive safeguards—the very heart of this legislation, in our opinion—have been eliminated, either directly or in effect, from the subcommittee print. Therefore, were H.R. 6775 to be enacted in its present form, it would give ocean shipping conferences virtually unrestricted license to employ dual-rate contracts, and other conference practices, as deliberate predatory devices to stifle the competition of carriers not affiliated with the conferences.

As the committee is aware, ocean shipping conferences operating in the foreign commerce of the United States are private organizations, somewhat akin to trade associations, organized to further the business interests of the participating steamship lines. While the conferences must file their agreements with the Board and secure approval prior to initiating joint action, because of the international nature of the shipping industry, the supervision which the Board may exercise is quite limited and hardly comparable to the comprehensive regulation exercised with respect to domestic transportation industries by such agencies as the Civil Aeronautics Board and the Interstate Commerce Commission. For example, the Board has no jurisdiction over the reasonableness of rates charged by steamship lines in American foreign commerce and, except as to subsidized U.S. carriers, has no control over the adequacy, frequency, or regulatory of service provided by steamship lines operating to and from U.S. ports.

The most profound change in H.R. 6775 which would be effected by the subcommittee print deals with the right of nonconference carriers to enter or serve ocean trades with freedom from predatory and anticompetitive onslaughts by the conferences.

The typical shipping conference represents a tremendous concentration of power. On practically every one of the U.S. foreign trade routes the conferences enjoy monopoly control; indeed, there are few, if any, in which the conference does not control at least 80 percent of the liner cargo movement. In most trades the percentage is much higher. Absent the antitrust exemption which Congress provided in the Shipping Act, the joint rate-fixing activity and the other forms of anticompetitive collaboration typical of the conference system would do violence to the antitrust statutes. The history and weight of interpretation of the 1916 act amply demonstrate that while Congress made it possible for steamship lines to cooperate voluntarily in conference arrangements, Congress was equally determined to protect the rights of carriers who choose not to participate in conferences, as well as to insure to shippers the right to patronize nonconference carriers without retaliation from the conferences. Thus, for example, Congress specifically outlawed in section 14, first and second, of the Shipping Act two of the most vicious prac-

tices known in 1916 to have been employed by conferences against their competitors; namely, the deferred rebate and the operation of "fighting ships." In section 14, third, Congress similarly prohibited retaliation against shippers who patronize other carriers.

H.R. 6775 as enacted by the House of Representatives took into account the demand for legalization of dual-rate contracts but at the same time provided that such contracts not be used where designed to drive another carrier out of business or where the reasonably likely result of their use would be equally adverse to the public interest in maintenance of free competition. By contrast, the subcommittee print of August 8, 1961, reflects the philosophy that a carrier ought to join a conference or suffer the consequences of predatory conference action. It is this approach to legislation on dual rates which the Department of Justice finds so disturbing.

The changes effected in sections 1 and 2 of H.R. 6775 by the subcommittee print are not fully apparent until study is made of all the provisions of sections 3 and 4 of the subcommittee print, and particularly of section 4. While section 3 appears to retain in substance the language of the House-passed version which would bar approval of any dual-rate contract which is intended or will be reasonably likely to cause the exclusion of any carrier from the trade, section 4 would wholly nullify the purport of this key provision. Section 4 of the subcommittee print provides that "[i]f a common carrier is eligible but unwilling, on reasonable and equal terms and conditions, to join a conference approved by the Board and serving a trade, such carrier may not be deemed excluded from that trade, or prevented from entering it, or eliminated from it, within the meaning of all such terms as used in this section and section 14b of this act." The clear effect of the latter provision would be to deprive the nonconference carrier of the protection against unfair exclusion from a trade whenever the nonconference carrier has chosen to remain independent of the conference. Since almost every conference in the U.S. foreign trade would welcome the membership of the nonconference carrier in order to eliminate the latter's competition, it is impossible to conceive of a situation involving a nonconference carrier in competition with a conference which would not fall within the above-quoted language of the subcommittee print. In sum, therefore, the Committee on Commerce, in considering adoption of the proposed language of the subcommittee print vis-a-vis the language of the House enactment, will be deciding which concept shall henceforth apply to the ocean shipping industry: freedom of opportunity for all steamship lines, whether as conference members or independent operators, according to individual preference, as opposed to compulsory conference membership resulting in elimination of competition and monopolistic freight rates.

The Department of Justice considers indispensable to any reasonable enactment on dual-rate and steamship conference agreements the inclusion of language unequivocally barring the approval of such agreements where they are intended or will be reasonably likely to cause the exclusion of another carrier from the trade. Assistant Attorney General Loevinger indicated in his testimony before the Merchant Marine and Fisheries Subcommittee on August 3, 1961, how important are the actual and potential benefits of this legislative protection to American carriers, shippers, and the general public. Judge Loevinger noted that, even though at a given moment there may be no American carrier operating independently of the conferences, the ability of an American carrier to withdraw without fear of conference retaliation provides it with leverage within the conference which may be ex-

erted to avert action which may be adverse to its interests or to the foreign commerce of the United States. This is of extreme significance to American carriers which account for only a small vote in virtually every important conference serving our foreign trade.

It is important also to bear in mind that in the ocean trades competition is the only practical restraint on unduly high freight rates. In this connection, the Under Secretary of State submitted to the Merchant Marine and Fisheries Committee on August 3, 1961, data obtained from foreign governments in response to the State Department's inquiry of them how reasonableness of rates is assured in waterborne commerce. Eight foreign nations—Belgium, Denmark, Federal Republic of Germany, Finland, Italy, Netherlands, Norway, and Sweden—of the 11 questioned, replied that they rely on free competition to achieve reasonable rates. The subcommittee print, however, would leave the way open for shipping conferences to eliminate the very competition which the United States has historically fostered and which a majority of foreign nations espouse, by withdrawing protection of the rights of the competitor who may choose to offer rate competition.

We would further direct the committee's attention to the example cited in Assistant Attorney General Loevinger's testimony of the unconscionable rate charged on an important commodity moving in American foreign commerce when there was no independent carrier providing competition in the particular trade. The entry of an independent carrier brought about a reduction of the rate from \$80 to \$40, the latter level being one which, by the admission of one of the American carriers involved, still permitted profitable operations.

For the reasons outlined above, we urge the committee to delete the provision appearing in the subcommittee print beginning at line 22 on page 5, which completely nullifies the protection for nonconference carriers contained in the House-passed version. This important competitive safeguard, but for the language beginning at line 22 on page 5, would be preserved in the subcommittee print. We deem it essential that these protective provisions be retained as they were in the House-enacted version of H.R. 6775.

There are other provisions of the subcommittee print on which comment should also be made. Whereas section 1 of the House enactment would require the proponents of dual-rate systems to establish in Board proceedings that the proposed dual-rate contract would not have the proscribed effects, the subcommittee print would shift the burden to opponents thereof or to the Board. The latter would have to prove by the preponderance of the evidence that a dual-rate contract would contravene the language of the bill. We believe that the House approach is the more reasonable. It places the burden where it belongs, that is, upon the proponent and expected beneficiary of the proposed dual-rate contract.

The subcommittee print also changes the House-enacted provisions dealing with dual-rate contracts by inserting the word "common" before the word "carrier" in several places. The insertion of the word "common" before the word "carrier" on line 17 of page 2 would limit the protection against exclusionary dual-rate systems to common carriers and would appear to permit the use of dual-rate contracts which are designed or are likely to exclude a carrier which is not a common carrier. We are aware of no justification for differentiating between the types of carrier that might be adversely affected by conference use of dual-rate contracts. We therefore recommend that the committee delete the word "common" wherever it has been added to H.R. 6775 by the subcommittee print. This comment would also ap-

ply to the addition of the word "common" on line 17 of page 5 of the print.

We turn now to the language of the subcommittee print which relates to provisions which must be expressly incorporated in any dual-rate contract to be lawful under the proposed legislation.

The subcommittee print would strike from H.R. 6775 the provision that prohibits dual-rate contracts from covering shipments of goods where the contract shipper has no legal right to select the carrier. The effect of this deletion will be to create endless controversy as to whether or not certain shipments, notably shipments of goods sold on f.o.b. and f.a.s. terms, are covered by approved dual-rate contracts. Without the provision contained in the House version, the way is left open for conferences to charge contract shippers with breach of their dual-rate contracts when they sell goods to buyers who elect to ship via nonconference carriers. The deletion of this provision could be construed to permit the conferences to forbid contract shippers from doing business with anyone who will not surrender his right to make his own shipping arrangements. We urge that this provision be restored to the bill in order that it be made clear that Congress does not intend to allow the shipping conferences to dictate the terms upon which one merchant must sell to another.

Another provision deleted from the House enactment which should be reinstated is that precluding any requirement that shippers divert their shipments from natural routings. The purpose of this provision was to insure shippers' freedom to choose the ports from which and to which to ship their goods. It is one thing for Congress to permit a system of contracts under which shippers must promise that when they ship from a particular port they will use conference vessels, but it is a wholly different thing to permit conferences to compel shippers to ship from a particular port when it may be more economical for them to ship from other ports which the conferences may not happen to serve. The Department of Justice recommends that the House provision on this point be reinstated in H.R. 6775.

We are also concerned with clause 3 of section 3 of the subcommittee print. This clause would limit damages recoverable for a shipper's breach of a dual-rate contract to actual damages, but the proviso permits liquidated damages not to exceed the freight charges at the contract rate, less cost of handling.

We reiterate our previous objection to the proviso in this clause. It is our understanding that clause 3 is in the bill for the purpose of barring the past practice of disguising oppressive penalties in the form of liquidated damages. At the same time it was desired to permit liquidated actual damages where desired by the parties so as to avoid possible future uncertainties and controversies in situations where actual damages were difficult to prove.

We are convinced that the present formula will not achieve the objective of eliminating penalties. The proviso assumes that the actual damages for a shipper's breach of a dual rate contract are the same as damages resulting from breach of a space reservation or booking contract. As was made clear in Assistant Attorney General Loevinger's testimony on August 3, 1961, the present proviso, which in effect equates the two types of damage, can only result in damages for a shipper's dual rate contract breach far in excess of actual damages. In its present form, therefore, the bill still leaves the way open for unduly harsh and punitive results.

While we recognize that any effort to specify liquidated damages may not in all cases result in an approximation of the actual damages, we observe that no liquidated damage formula has been advanced which does not also constitute a severe penalty all out of proportion to the actual damages suf-

ferred by the conference or its members. Since the demand is for a measure which is certain, is fair to the carrier, but at the same time not oppressively punitive, we respectfully suggest that the committee place a maximum limit on liquidated damages of 1½ times the spread between contract and noncontract rates. This, we believe, is a fair and reasonable approach to the problem. It would deter a shipper from disregarding his dual rate contractual obligations, but would not place him in jeopardy of being required, in the event of breach, to pay the conference an amount clearly having no logical relation to the loss which the conference can be considered to have sustained.

Clause 5 of section 3 of the subcommittee print permits the approval of dual-rate systems where the maximum spread between contract and noncontract rates is 15 percent. We view any spread in excess of 10 percent as unwarranted. In this connection, it should be noted that the House report indicated a problem in determining a maximum spread figure which would not penalize a shipper who does not choose to limit his shipments to conference vessels and which at the same time would provide a reasonable inducement to execute such agreements. It is the considered view of the Department of Justice that the 15-percent maximum spread provided for in clause 5 of section 3 of the subcommittee print does not strike such balance. Rather, it weighs heavily on the side of coercing shippers to limit their cargoes to conference vessels. All would agree that shippers should be provided with a realistic choice in deciding whether to contract to ship exclusively on conference vessels or whether to retain their right to ship on both conference and nonconference vessels as they choose. There is good reason to believe that a spread of 15 percent would foreclose this choice.

While the difference between a 10- and a 15-percent spread may seem to be solely a matter of degree, the fact is that in the highly competitive and price-conscious world of international trade an additional handicap of 5 percentage points in freight rate markedly reduces a shipper's ability to determine whether he would prefer freedom to use both conference and nonconference vessels rather than being limited to the use of one type of service. We recommend that a 10-percent maximum be written into this clause by the committee.

We would next direct the committee's attention to the provision of section 4 of the bill which in effect would permit Board approval of agreements between conferences serving different trades which are competitive, with the proviso that each conference retain what the bill refers to as the right of independent action. We urge the committee to delete the proviso thereby clearly prohibiting any interconference agreements. While the existing language of the bill gives a conference the right to take independent action on matters embraced within the agreement, it nevertheless permits all parties to an agreement to establish a uniform policy on rates and other competitive matters when it serves their purpose to do so. The Department of Justice is convinced that it is not in the public interest to permit agreements which may create a virtual monopoly of ocean transportation to or from this country. Congress should not sanction private rate-fixing schemes or supercartels which could embrace every port through which the foreign commerce of the United States is conducted. Such an arrangement would deny shippers the cost savings resulting from their location on or in proximity to a particular coastal range.

Another amendment to section 15 of the Shipping Act is the provision of section 4 of the subcommittee print requiring conferences to police their agreements. We question the policy requiring conferences to en-

gage in private policing. Congress should neither require nor permit cartels, even the ones in ocean shipping, to use penalties to coerce compliance with their cartel agreements. Nor do we believe Congress should delegate to cartels the responsibility for enforcing our maritime laws, especially in view of the potential harm that could be caused by unwarranted coerced disclosure of confidential business records to competitors and from the assessment by the cartels of harsh or discriminatory penalties.

Section 5 of the subcommittee print provides that agreements filed with the Board after passage of the proposed act are lawful until disapproved by the Board. There is no limit set on the period within which the Board must act on such agreements. The exemption from the antitrust laws of any cartel agreement, and certain cartel tying devices, is a most serious matter and a departure from our free enterprise principle that competition should be the rule of trade. No dual-rate agreement should be permitted to go into effect for an unlimited period.

The Chairman of the Board, in his testimony before the House committee, indicated that a 1-year period would be a realistic one within which to review and dispose of the number of agreements which are likely to be filed after passage of this legislation. If it takes the Board a longer period to review such agreements, at least the unsupervised dual-rate system cannot continue to be employed during any such delay. On the other hand, under the provision in the subcommittee print, any delays experienced by the Board would have the effect of permitting the unsupervised dual-rate system to continue in effect. Clearly, this would encourage dilatory tactics and tend to postpone indefinitely the clarification of status of all fuel-rate contracts which for the past 3 years Congress has been seeking to provide.

The Department of Justice also recommends the deletion of section 7 of the subcommittee print. This section would permit serious inroads to be made upon the confidential relationship between shippers and carriers established by section 20 of the 1916 Shipping Act. It must be appreciated that shippers are required to disclose certain of their private business affairs to carriers to permit the assessment of proper tariff charges. Under section 20 of the Shipping Act the carriers are in return put under the obligation of maintaining such data in secrecy so that the shippers' business transactions are not disclosed to competitors and that such information is not used in any way to the shippers' detriment.

The proposed legislation would depart from the traditional concept of section 20 and would cause a substantial lessening of the protection which shippers now enjoy. Under the instant bill not only could a common carrier furnish data on a shipper's transactions without the shipper's consent but a "conference or any person, firm, corporation, or agency designated by the conference" could solicit information as to a shipper's transactions. Presumably this data could be solicited from freight forwarders, terminal operators, warehousemen, or any other persons subject to the Shipping Act who may have knowledge of the shipper's transactions. This would involve a radical change in public policy and, in our opinion, would open the way for widespread abuses and breaches of confidence in the shipping industry.

In addition to these potential results, the bill creates an apparent paradox. While a conference or its agent would be permitted by the proposed legislation to solicit information without limitation, those other than a conference carrier who might be solicited would still be restrained by the language of section 20 from disclosing the solicited information. Thus section 7 of the instant bill would authorize the solicitation of data

from persons whom, were they to divulge it, could be criminally prosecuted for doing so. Any further attempt to deal with this anomalous situation would probably create more problems than it would solve. Even if all persons subject to the Shipping Act were to be authorized to release data for the purposes stated in the bill, a terminal operator or warehouseman would obviously act at his peril in relying on a representation that confidential data he was solicited to disclose was desired solely for one of the purposes permitted by the bill.

For the reasons indicated in the foregoing analysis, the Department of Justice respectfully urges the Committee on Commerce to amend the subcommittee print of H.R. 6775 in accordance with the recommendations contained herein.

The Budget Bureau has advised that it has no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BYRON WHITE,
Deputy Attorney General.

Mr. KEFAUVER. Mr. President, I wish to clear up one or two items which the distinguished Senator from Washington [Mr. MAGNUSON], chairman of the Committee on Commerce, placed in the RECORD. He referred to a statement by Mr. Stakem, who was the Maritime Administrator, who testified before the Senate committee. Instead of saying that if he had a choice between the House bill and no bill, he would rather have no bill, I find on page 47 that he said:

If the choice is between this bill and no bill, which would leave the dual-rate systems high and dry, we would say this bill.

I thought that statement ought to be clarified.

I think also, for the purpose of clarification, it should be stated that the Civil Aeronautics Board, under title 49, section 1373, has the power to reject unreasonable rates. I make this reference so that anyone who is interested may read the provision for the Civil Aeronautics Board in connection with the Senate bill. From a reading of the Civil Aeronautics Board authorization, it is apparent that that Board is given greater power over the fixing of tariffs, passing upon their reasonableness, and also preventing monopoly and unjust discrimination than is provided for in the Senate bill in connection with water carriers.

Mr. ENGLE. Mr. President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield.

Mr. ENGLE. I am advised that the international airlines, which have an International Air Transport Association, undertake to agree on rates in the same fashion as we provide for the steamship common carriers in the proposed legislation.

Mr. KEFAUVER. That is correct. The IATA does attempt to agree upon rates. Then the rates must be filed and posted with the Civil Aeronautics Board. The Civil Aeronautics Board has the right in its statute to approve or disapprove any rates.

Mr. ENGLE. That is exactly what this bill provides.

Mr. KEFAUVER. The bill does not refer to rates at all.

Mr. MAGNUSON. The bill in effect provides for the fixing of rates because the agreements themselves must be approved upon by the Maritime Commission.

Mr. KEFAUVER. Find me the section where the bill provides that the Maritime Commission can disapprove rates. I have searched the bill carefully. Such language was contained in the House bill, but it has been removed from the Senate bill. We seek to put it back.

The language which was stricken from the House bill appears on page 7 of the bill:

The Board shall disapprove any conference rate, fare, or charge which after hearing it, finds it to be so unreasonably high or low as to be detrimental to the commerce of the United States.

That language was stricken out by the Senate Committee on Commerce.

The Civil Aeronautics Board, another regulatory agency, had this to say in contrast with what is being said here about ocean shipping:

No proper concept of governmental responsibility can justify leaving the ultimate determination of a fair and reasonable international rate structure wholly in the hands of an all-embracing international cartel.

In my opinion, and with all due respect, that is what the Senate bill does, because the rate restriction provision was stricken from the House bill.

Mr. ENGLE. Mr. President, will the Senator from Tennessee yield for an addition to the RECORD?

Mr. KEFAUVER. I yield.

Mr. ENGLE. I should like to have included in the RECORD the remainder of Mr. Stakem's answer.

Mr. KEFAUVER. The whole statement has been placed in the RECORD. The distinguished Senator from Washington has placed it in the RECORD.

Mr. ENGLE. Mr. Stakem said, additionally:

If the choice is between this bill and interim legislation for a continued period of study, we would favor the interim legislation.

In other words, he says the conference system is so important that he would prefer to have it continue for another year, if necessary, to study it, rather than to take the bill as it came from the House.

Mr. KEFAUVER. That is different from saying that if he had a choice, he would rather have no bill than to take the House bill.

Mr. President, in the course of my remarks, I shall refer to certain letters, tables, and other documents. I ask unanimous consent that they may be printed in the RECORD at the point designated.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ENGLE. Mr. President, I ask unanimous consent that the communications which I have in my hand from various agricultural groups be printed at this point in the RECORD.

There being no objection, the communications were ordered to be printed in the RECORD, as follows:

SAN FRANCISCO, CALIF., September 7, 1961.

Hon. CLAIR ENGLE,
Senate Office Building,
Washington, D.C.:

H.R. 6775 my wires August 31 still waiting copies of revised version of August 26 for detailed review my attorneys, Los Angeles, after which can comment more intelligently. Meantime big bugaboo is condition (3) "coverage" of shippers' rate agreement. Legal or actual right to select carrier extremely difficult to determine or establish concisely on each shipment; hence would not only lead to litigation about possible breaches of contract when or if nonconference vessel used, but could cause serious misunderstanding and questions as to whether shippers using conference vessels in good faith were entitled to contract rates, or whether carriers could legally assess contract rates. The most important aspect which should be unequivocally settled by this legislation is f.a.s./f.o.b. question, which unfortunately present language leaves even wider open than before. Earnestly request reconsideration this clause basis language I proposed July 28. Undoubtedly, other parts of bill could be still further improved, but this is the most important issue. While I am supposed to be on vacation, am following this closely; and hope comment further and more constructively after more detailed review. Gruening amendment regarding State Governors should be rejected. We do not want international trade complicated by 50 State utility commissions. Any State aggrieved can file complaint before FMC same as any party. Also proposed Kefauver amendments must be rejected. Have seen them only briefly but they contain much of language quite properly stricken from House version by your committee, and it must stay out.

Best regards.

U.S. BORAX,
T. R. STETSON.

NEW ORLEANS, LA.,
September 12, 1961.

Hon. WARREN MAGNUSON,
Chairman, Commerce Committee, U.S. Senate,
Senate Office Building, Washington, D.C.:

We commend the action of your Commerce Committee in unanimously reporting to the Senate your revision of H.R. 6775 and consider this legislation very fair and reasonable both from the shippers and carriers standpoint. Particularly is it satisfactory to the members of the association as the bill finally approved by your committee included therein a satisfactory clause covering f.o.b. fast sales which is so essential to the shipper who in order to be competitive must at times sell on this basis. We trust this bill will be promptly passed by the Senate so that the necessary conference can be held with the House of Representatives and out of that conference will come a reasonable and equitable bill at this session of the Congress which is necessary for all concerned. We sincerely trust the Senate leadership will promptly work toward this end.

MISSISSIPPI VALLEY ASSOCIATION,
ROBERT L. SHORTLE.

LITTLE ROCK, ARK.,
September 11, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce, Washington, D.C.:

The Arkansas-Missouri Cotton Trade Association respectfully asks for your support of H.R. 6775 as reported by Senate Committee on Interstate and Foreign Commerce. We consider legislation fair and reasonable for both shippers and carriers particularly as it contains clause covering f.o.b.-f.a.s.

sales which essential to shippers who must sell on that basis to satisfy customers.

ARKANSAS-MISSOURI COTTON TRADE
ASSOCIATION,
A. C. MAHAN, Jr., President.

OKLAHOMA CITY, OKLA.,
September 12, 1961.

Senator WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.:

Urge passage of H.R. 6775 as reported by Senate committee. We consider legislation fair and reasonable for both shippers and carriers.

OKLAHOMA STATE COTTON
EXCHANGE,
M. RASCOE,
Secretary-Treasurer.

MEMPHIS, TENN., September 11, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce, Senate Office Building, Washington, D.C.:

The Southern Cotton Association, composed largely of cotton shippers residing in Tennessee, Mississippi, and Louisiana, want to thank you for your efforts regarding H.R. 6775 and assure you of our support. This legislation needed and particularly clause re f.o.b.-f.a.s. sales. Have today wired Senators from our territory, urging their support.

Best regards.

SOUTHERN COTTON ASSOCIATION,
RICHARD BLOCK, President.

MEMPHIS, TENN., September 11, 1961.

Senator WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce, Senate Office Building, Washington, D.C.:

Members American Cotton Shippers Association heartily endorse your committee's report on H.R. 6775 as we consider it reasonable and fair to both cotton shippers and steamship lines especially as bill contains clause regarding f.o.b.-f.a.s. sales which very essential to shippers who must sell on those terms to satisfy customers thereby making our cotton competitive in world markets. Sincerely hope Senate will act favorably on your committee's report.

M. H. MILLER,
Chairman, Ocean Freight Committee,
American Cotton Shippers Association.

WACO, TEX., September 11, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce, Washington, D.C.:

On behalf of the cotton exporters of Texas we earnestly urge passage of H.R. 6775 as reported by your committee. We consider this legislation fair and reasonable for both exporters and carriers. It will help our exporters meet competition and satisfy our cotton customers. Cotton needs all the help it can get in holding its export markets.

Respectfully,
TEXAS COTTON ASSOCIATION.

CHICAGO, ILL., September 6, 1961.

Senator W. G. MAGNUSON,
Senate Office Building,
Washington, D.C.

As a substantial exporter and importer we strongly urge that the Senate pass without amendment H.R. 6775 the dual ocean rate bill as reported by the Senate Commerce Committee. We consider this legislation necessary to protect and foster our foreign commerce.

THE QUAKER OATS CO.,
J. R. STALEY, Vice President.

PITTSBURG, CALIF., September 5, 1961.
 Senator CLAIR ENGLE,
 Senate Office Building,
 Washington, D.C.:

The Senate Commerce Committee has published a draft of H.R. 6775 dated August 26, 1961, which includes the following exemption on page 16, line 6: Excludes cargo of the contract shipper loaded in bulk without mark or count. This bulk exemption is of vital interest to U.S. shippers and we strongly urge inclusion of this bulk exemption without qualification in the final bill presented and approved by the Senate. We feel any limiting amendments to this bulk exemption would be detrimental to U.S. commerce.

LELAND A. DOAN,
 General Manager, the Dow Chemical Co.

NEW ORLEANS, LA., September 11, 1961.
 Senator WARREN G. MAGNUSON,
 Chairman, Senate Interstate and Foreign
 Commerce Committee, Senate Office
 Building, Washington, D.C.:

Advised that your committee reported unanimously as favoring passage of H.R. 6775 which we commend. Understand from reliable sources that American steamship lines strongly in favor of this legislation. Also since your committee included their report satisfactory clause f.o.b.-f.a.s. so essential to American shippers to remain competitive legislation highly acceptable to shippers. Urgently request prompt passage of bill so that necessary conference can be held with House committee out of which should come the passage of a reasonable and equitable bill at this session of Congress which is so vital for all concerned.

NEW ORLEANS TRAFFIC & TRANSPORTATION BUREAU,
 LOUIS A. SCHWARZ.

MEMPHIS, TENN., September 11, 1961.
 Senator WARREN G. MAGNUSON,
 Chairman, Senate Commerce Committee,
 Washington, D.C.:

We commend your committee in approval of revision H.R. 6775 as Association of Hardwood Lumber Exporters we believe fair and reasonable. Particularly commend clause covering f.o.b. sales which are often necessary in export, please use best efforts to get Senate to pass bill so Conference Committee can complete legislation this session.

PHILIP D. HOUSTON,
 President, National Lumber Exporters,
 Association.

THE NATIONAL LUMBER
 EXPORTERS ASSOCIATION,
 Memphis, Tenn., September 11, 1961.
 Senator WARREN G. MAGNUSON,
 Chairman, Commerce Committee, Senate
 Post Office, Washington, D.C.

DEAR SENATOR MAGNUSON: I have wired you and hereby confirm as follows:

"We commend your committee in approval of revision H.R. 6775. As association of hardwood lumber exporters we believe fair and reasonable. Particularly commend clause covering f.o.b. sales, which are often necessary in export. Please use best efforts to get Senate to pass bill so conference committee can complete legislation this session."

As president of the National Lumber Exporters Association I feel that every aid possible should be extended to American exporters to further penetrate the export market and the bill your committee has unanimously approved is fair and equitable to the shipper as well as the steamship companies.

I have thought to wire you as the time is short, and we feel that such legislation would be very helpful if it were completed this session rather than wait over until the next session.

Respectfully yours,
 PHILIP D. HOUSTON,
 President.

Mr. KEFAUVER. Mr. President, it is a matter of great regret to me that I disagree with the distinguished Senator from California [Mr. ENGLE] and the distinguished Senator from Washington, chairman of the Committee on Commerce [Mr. MAGNUSON], with whom, in so many antitrust matters, we have fought to protect the interests of the people of the United States.

I am impelled to take the position I take today to try to restore some of the protections which were provided in the House bill, for this reason: One of the unique and fine things about the American economy is our free, competitive enterprise system. There is probably no other nation left in the world today where commerce is regulated, as it is in the United States, largely by competition. What is attempted to be done here is substantially to take out of the competitive field, without restraint, or adequate restraint, at least, a great segment of our competitive system, to wit, our steamship transportation.

I favor strengthening the antitrust laws. I favor making it more possible for little fellows to compete. I do not favor the building up of cartels and cartels of cartels, which the proposed legislation seeks to do.

It is obvious, it is plain, in fact it is admitted in the report, that the purpose of the bill is to force everyone into the conferences and to have no competition.

I know the heads of many of the steamship companies. They are fine friends of mine. They are wonderful Americans. They do excellent work. It is not easy to criticize a bill which many of them have expressed themselves as favoring. However, in the long run, unless we provide some protections, so as to assure competition and to prevent monopolies and the formation of cartels in our economy, everyone will suffer.

It has been stated that the Maritime Board, or Commission, as it is now called, expressed preference for the Senate bill. But Mr. Stakem has said that as between the House bill and no bill, he would certainly take the House bill. I do not seek to restore all the language of the House bill, but there are certain features which ought to appeal to the American shipper, the person who wants competition. They ought to appeal to Congress.

The House Committee on Merchant Marine and Fisheries, under the chairmanship of Representative HERBERT BONNER, of North Carolina, has held extensive hearings, lasting over a period of a year or more, comprising many volumes of testimony, taken in all parts of the United States, on this problem. That committee has examined into every phase of the question. It has conducted excellent, splendid hearings on this subject.

The House Subcommittee on Antitrust and Monopoly, under the chairmanship of the able and great Member of Congress, Representative EMANUEL CELLER, has conducted extensive hearings in connection with the maritime problem, ferreting out all the protections there ought to be for shippers, for the inde-

pendent carriers, for tramp ships, and for the public.

Under the chairmanship of Representative BONNER, and with the advice and suggestions of Representative CELLER, the House Committee on Merchant Marine and Fisheries has worked out a good, practical bill which passed the House unanimously on the Consent Calendar. So far as I know, it was reported unanimously by the House Committee. That bill provided certain protections.

There is more than one group concerned in this matter. The group for which the Senate bill would provide an absolute cartel or monopoly, with perhaps some minor reservations, is comprised of the so-called conference carriers, the conference steamship companies.

There are others who should be considered. The shippers of freight should be considered; the farmers should be considered.

I wish to point out now—as I shall do in more detail later on—that the Department of Agriculture favored the House version of the bill, but does not like the Senate committee's version of the bill, because it does not provide protection.

Furthermore, as has already been stated, the Antitrust Division of the Department of Justice violently opposes the Senate committee's version of the bill, and states that the minimum protection of the public is provided by the House version.

So I hope the House version will be passed, perhaps with some improvements and changes, but at least so that these protections will be continued.

Mr. MAGNUSON. Mr. President, at this point will the Senator from Tennessee yield?

The PRESIDING OFFICER (Mr. BURDICK in the chair). Does the Senator from Tennessee yield to the Senator from Washington?

Mr. KEFAUVER. I am glad to yield.

Mr. MAGNUSON. I must attend a conference in a few minutes. At this time, without discussing the merits of the two versions of the bill, I believe the record should show clearly why we have the bill before us at this time.

Mr. KEFAUVER. Yes.

Mr. MAGNUSON. It was 3 years ago that the Supreme Court of the United States, in its decision in the case of *Federal Maritime Board v. Isbrandtsen Company* (356 U.S. 481)—1958, ruled the historic practice of dual rates to be illegal. In effect, in its decision the Supreme Court said the Congress should pass some legislation dealing with the problem of dual rates.

At that time we were faced with an emergency. So, as chairman of the committee, along with Representative BONNER, and the rest, we asked Congress to provide a 1-year extension of this historic practice in the maritime economy, until we could get at this very highly complex matter. That year passed; and because the matter is highly controversial and technical, it was easier to provide for another extension. There

now have been three extensions, I believe, of the dual-rate arrangement.

Both the House committee and the Senate committee thought the time had come to have permanent legislation, if possible. The House committee worked hard on this measure, and held long hearings. So did our committee and our subcommittee, headed by the Senator from California [Mr. ENGLE].

So we have covered this field; and from all those studies and all that work have come the House version of the bill and the Senate committee's version.

The present extension expires midnight September 14. So again we are faced with this highly complex matter—and I agree with the Senator from Tennessee that it is complex.

This is why the Senate Committee on Commerce hopes the Senate will pass the bill and send it to conference, so that, after the many extensions, permanent legislation can be had.

I thought it would be well to have the history of this matter placed in the RECORD.

Mr. KEFAUVER. Yes, that is true.

I wish the bill had been taken up earlier, so that there would have been more time for debate and for the conference. Ever since the Senate committee reported the bill, about 2 weeks ago, I have filed some amendments and have been ready to debate the bill. I know that the Senator from California probably has been ready, too. But the consideration of other measures has caused the consideration of this bill to be postponed.

Mr. MAGNUSON. Yes.

The House committee stated that it wished to begin the hearings on the matter of dual rates. So we permitted the House committee to do so; and its hearing took longer than had been expected.

Of course there is always the possibility of providing a further extension; but I hope we can arrive at some conclusion and can get some permanent legislation on the books.

Mr. KEFAUVER. At any rate, the delay has not been my fault.

Mr. MAGNUSON. That is true.

Mr. KEFAUVER. I have been ready to proceed with the consideration of the bill. The Senate committee filed its report on August 31, and we have been ready to proceed to debate the bill. But other measures have prevented that.

Mr. MAGNUSON. Yes, other measures seem to have had priority.

Mr. KEFAUVER. Yes.

Mr. President, the decision to which the chairman of the committee has referred is that of the Supreme Court of the United States in the case of *Federal Maritime Board v. Isbrandtsen* (356 U.S. 481). The decision was handed down on May 19, 1958. Since then, there have been three extensions of the present cartel system.

INTRODUCTION

Mr. President, the bill for consideration on the floor today, H.R. 6775, would legalize so-called dual-rate contracts between shippers and conferences of steamship carriers in the foreign commerce of the United States.

What is a dual-rate contract? Essentially, it is an exclusive patronage contract whereby a shipper—or consignee—promises to transport all of the cargo under his control, between ports within the scope of a steamship conference agreement, aboard vessels belonging to that conference. Shippers who do not sign such an agreement are assessed a rate, called the noncontract rate, substantially above the so-called contract rate which is available to signatories. In its most elemental terms, the dual-rate contract is nothing but an exclusive dealing arrangement in which signatory shippers are given preferential treatment while those unwilling to be bound are penalized by higher rates.

It is obvious that the dual-rate system is essentially discriminatory in nature. For the very same transportation services, a steamship line is permitted to assess one rate for contract signatories and a substantially higher one for non-signers. Indeed, the Federal Maritime Administration has acknowledged the essentially discriminatory features of this form of agreement by referring to the "prima facie discrimination against shippers inherent in the use of dual rates."

Why is it necessary at this time to take congressional action to legalize these essentially discriminatory devices? Back in 1958, the Supreme Court of the United States declared that such contracts, when employed to drive nonconference carriers out of the trade, were in violation of section 14, third of the Shipping Act—*Federal Maritime Board v. Isbrandtsen Co.*, 356 U.S. 481 (1958). The bill as it is before the Senate today would overrule most of the implications of this landmark decision and place virtually all of the foreign commerce of the United States at the mercy of foreign dominated steamship conferences with absolutely no residual authority in an American agency to exert any control whatsoever over the rate levels established by these conferences.

Let us examine, for a moment, the nature of these organizations upon which, under the bill as proposed, would devolve almost unrestrained power to set rates for virtually all of the foreign commerce of the United States. A steamship conference is nothing more than an international cartel—in fact, a man named David Marx has written a book about conferences which he has titled "International Shipping Cartels." There are today some 105 of these cartels covering freight traffic in the foreign commerce of the United States and innumerable—but untabulated—other roving international trade routes between foreign nations.

There is no use closing our eyes to the fact that these conferences are wholly dominated by foreign lines. I would like to place in the record at this point a list of the steamship conferences using dual rate systems in the foreign commerce of the United States showing the number of American lines and the number of foreign lines belonging to them.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

List of steamship conferences using the contract/noncontract rate system, showing the number of U.S.- and foreign-flag members as of Nov. 12, 1959

Name and agreement number of conference	Members	
	U.S. flag	Foreign flag
Associated Steamship Lines (Manila) (5600).....	8	50
Association of West Coast Steamship Companies (3302).....	2	14
Atlantic and Gulf-Indonesia Conference (8080).....	3	4
Atlantic and Gulf/Panama Canal Zone, Colon and Panama City Conference (3868).....	4	4
Atlantic and Gulf/Straits Settlements, Singapore, Malaya and Thailand Conference (8240).....	3	8
Atlantic and Gulf/West Coast of Central America and Mexico Conference (8300).....	4	1
Atlantic and Gulf/West Coast of South America Conference (2744).....	2	4
Brazil-United States-Canada Freight Conference (5450).....	2	13
Caleutta/U.S.A. Conference (6500).....	3	5
Canexco Freight Conference (6670).....	1	13
Canal, Central America Northbound Conference (6070).....	2	11
Capex Freight Conference (6170).....	1	8
Colpac Freight Conference (7270).....	0	6
Continental-U.S.A. Gulf Westbound Freight Conference (6150).....	3	6
Deli/New York Rate Agreement (7190).....	3	9
Deli-Pacific Rate Agreement (192).....	4	4
East Coast Columbia Conference (7590).....	2	2
East Coast South America Reefer Conference (6800).....	2	10
Far East Conference (17).....	6	17
Gulf/French Atlantic Hamburg Range Freight Conference (140-1).....	4	9
Gulf Mediterranean Ports Conference (134).....	5	14
Gulf and South Atlantic-Cuba Outports Conference (8150).....	1	2
Gulf and South Atlantic Havana Steamship Conference (4188).....	4	2
Gulf/United Kingdom Conference (161).....	4	4
Havana Steamship Conference (4189).....	1	4
Havana/U.S. Atlantic and Gulf Rate Agreement (7550).....	2	4
The India, Pakistan, Ceylon and Burma Outward Freight Conference (7630).....	2	6
Java-New York Rate Agreement (90).....	3	8
Java-Pacific Rate Agreement (191).....	4	3
Leeward & Windward Islands and Guianas Conference (7540).....	2	2
Mid Brazil/United States-Canada Freight Conference (7630).....	2	13
New York Freight Bureau (Hong Kong) (5700).....	5	16
North Atlantic Baltic Freight Conference (7670).....	2	18
North Atlantic French Atlantic Freight Conference (7770).....	1	3
North Atlantic Mediterranean Freight Conference (7980).....	7	20
North Atlantic United Kingdom Freight Conference (7100).....	1	11
North Atlantic Westbound Freight Association (5350).....	1	8
North Atlantic Continental Freight Conference (4490).....	3	12
North Brazil/United States-Canada Freight Conference (7640).....	2	9
Pacific Coast Australasian Tariff Bureau (50-1).....	1	7
Pacific Coast/Caribbean Sea Ports Conference (4294).....	2	19
Pacific Coast European Conference (5200).....	1	23
Pacific Coast/Mexico Freight Conference (7570).....	1	11
Pacific Coast/Panama Canal Freight Conference (7170).....	2	12
Pacific Coast River Plate Brazil Conference (6400).....	1	5
Pacific Indonesian Conference (6060).....	3	4
Pacific/Straits Conference (5680).....	4	7
Pacific/West Coast of South America Conference (4630).....	1	7
Pacific Westbound Conference (57).....	7	13
River Plate and Brazil Conferences (59).....	2	14
River Plate/United States-Canada Freight Conference (6900).....	2	12
Santiago de Cuba Conference (7650).....	2	0
South Atlantic Steamship Conference (8310).....	1	3
Straits/New York Conference (6010).....	3	13
Straits/Pacific Conference (7090).....	3	8
Trans-Pacific Freight Conference (Hong Kong) (14-1).....	6	17

List of steamship conferences using the contract/noncontract rate system, showing the number of U.S.- and foreign-flag members as of Nov. 12, 1959—Continued

Name and agreement number of conference	Members	
	U.S. flag	Foreign flag
U.S. Atlantic and Gulf/Australia-New Zealand Conference (6200)-----	1	3
United States Atlantic and Gulf/Haiti Conference (8120)-----	3	2
U.S. Atlantic and Gulf Ports-Jamaica (B.W.I.) Steamship Conference (4610)-----	3	0
United States Atlantic and Gulf/Venezuela and Netherlands Antilles Conference (6190)-----	3	5
The West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference (2846)-----	4	16
West Coast of South America North-bound Conference (7890)-----	2	3

Mr. KEFAUVER. Mr. President, out of some 62 conferences having dual rate contracts, in only 5 were American-flag lines in the majority. Some representative conferences in which foreign lines predominated include the mammoth Associated Steamship Lines (Manila), with 50 foreign-flag lines and 8 American; Association of West Coast Steamship Companies, with 14 foreign-flag lines and 2 American; Brazil-United States-Canada Freight Conference with 13 foreign-flag lines and 2 American; Camexco Freight Conference, with 13 foreign-flag lines and 1 American; North Atlantic Baltic Freight Conference with 18 foreign-flag lines and 2 American; North Atlantic United Kingdom Conference with 11 foreign-flag lines and 1 American; and so forth. Thus, it is obvious that any legislation without adequate safeguards permitting the use of dual rate agreements in reality redounds to the interests of foreign lines, any statements to the contrary notwithstanding.

Now, the industry is really aware of the fact that, when all is said and done, it is the foreign lines that will really reap the benefits of the legislation we are considering today. Yet, every effort has been made to obscure this fact by actually representing the movement as sponsored by American lines.

I ask unanimous consent to have printed in the RECORD at this point a "Private and Confidential Memorandum" found in the files of the Gulf Associated Freight Conferences, which covers all of our foreign trade out of gulf ports of Europe.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

[Celler committee hearings, pt. 2, vol. 2, p. 2406]

PRIVATE AND CONFIDENTIAL CONFERENCE AND DUAL RATE SYSTEMS IN THE MARITIME INDUSTRY, NEW ORLEANS, LA., SEPTEMBER 9, 1958

At a joint meeting of the five Conferences within the Gulf Associated Freight Conferences group (Gulf/French Atlantic Hamburg Range Freight Conference, Gulf/Mediterranean Ports Conference, Gulf/Scandinavian and Baltic Sea Ports Conference, Gulf/South and East African Conference, Gulf/United Kingdom Conference) held at New Orleans today (11 a.m., Tuesday, September 9, 1958) the Chairman of the Conferences re-

ferred to his private memorandums to the executive representatives of the member lines relative to studies and investigations being conducted by two important committees of the House of Representatives, United States, i.e., the Committee on Merchant Marine and Fisheries, headed by Congressman HERBERT C. BONNER, chairman of that committee, and the Committee on the Judiciary, headed by Congressman EMANUEL CELLER, chairman of that committee, also chairman of the Antitrust Committee of the House of Representatives, United States.

Chairman Carlys then stated that Mr. A. C. Cocke, vice president of Lykes Bros. Steamship Co., Inc., attended an important meeting in New York last week of American steamship interests and he thought it would be highly beneficial to the representatives of all of the member lines (as well as the conference counsel. Mr. Walter Carroll, who was present) to hear, firsthand, from Mr. Cocke what transpired at the meeting, whereupon he called on Mr. Cocke to address the meeting.

Mr. Cocke stated that he attended a meeting in New York last Friday (September 5, 1958) which was held under the auspices of the American Merchant Marine Institute the Committee of American Subsidized Lines and the Pacific American Steamship Association. He said that his company (Lykes Bros. Steamship Co., Inc.) was requested to have a representative at this meeting and he (Mr. Cocke) attended on behalf of Lykes Bros. Steamship Co., Inc. The following gentlemen were present at the New York meeting:

Mr. J. Alexander, vice president, American President Lines.

Mr. Jos. G. Ball, vice president, States Marine Corp.

Mr. Fred Bowers, vice president, Moorc-McCormack.

Mr. A. C. Cocke, vice president, Lykes Bros. Steamship Co., Inc.

Mr. Lew Lapham, president, Grace Line.

Mr. W. van Loon, vice president, American Export Line.

Mr. Ralph Casey, president, American Merchant Marine Institute, Inc.

Mr. Ralph Dewcy, president, Pacific American Steamship Association.

Mr. Walter Maloney, general counsel, American Merchant Marine Institute.

Mr. Alex Purdon, executive head, committee, American Subsidized Lines.

Mr. Cocke pointed out that lengthy discussions were had and the meeting (which lasted for about 2½ or 3 hours) culminated in a unanimous decision that the fight for the dual rate system and the defense of the conferences should be handled solely (with the exception of conferring with, in an advisory way, from time to time the foreign lines) as an American-flag steamship industry fight, because it was felt that it would be a mistake to, at this time, to bring the foreign lines (as such) into the picture, particularly in view of the existing situation in Congress and the strong attack Mr. CELLER is directing on the antitrust feature of the conferences and, therefore, the fight for the dual rate system and defense of the conferences should be spearheaded by American lines, exclusively.

Mr. KEFAUVER. I read only one paragraph from that memorandum:

Mr. Cocke pointed out that lengthy discussions were had and the meeting (which lasted for about 2½ or 3 hours) culminated in a unanimous decision that the fight for the dual rate system and the defense of the conferences should be handled solely—with the exception of conferring with, in an advisory way, from time to time the foreign lines—as an American-flag steamship industry fight, because it was felt that it would be a mistake to, at this time, to bring the

foreign lines—as such—into the picture, particularly in view of the existing situation in Congress and the strong attack Mr. CELLER is directing on the antitrust feature of the conferences and, therefore, the fight for the dual rate system and defense of the conferences should be spearheaded by American lines, exclusively.

The foreign lines are the ones that would gain the most, because, as was pointed out, we know foreign ships are operated more cheaply. So they will reap tremendous benefits out of the conference system. They want to be in the conferences, because they wish to get the highest possible rates. Of course, American-flag ships that operates in the conferences are subsidized to make up the differentials in the wages paid, and those companies make money; but this arrangement will prove to be a particularly big bonanza to the foreign ship lines.

The talk that the only ones who do not want to operate under conferences are foreign ship lines does not hold water. They are the ones who want to, because they can reap the greatest benefits.

This does not mean that foreign lines have not had an active, if concealed, hand in framing this legislation. The document I ask unanimous consent to have printed in the RECORD at this point demonstrates that a huge association of foreign lines was formed in Europe as early as 1959 to do whatever possible to obtain passage of the dual-rate legislation. This association is known as the Committee of European Shipowners and is obviously a lobbying group for the international steamship cartels.

There being no objection, the document was ordered to be printed in the RECORD, as follows:

BREMEN, December 11, 1958.

DEAR SIRS: The undermentioned lines; viz: Armement Deppe, Compagnie Générale Transatlantique, Fjell Line, Hamburg America Line, Holland America Line, Johnson Line, North German Lloyd, Fred Olsen, and Oranje Line, have come to the conclusion that it would be advisable to form an association of European conference lines, interested in the trade from the continent including Scandinavia, to U.S. ports and vice versa, for the purpose of watching the development of investigations of the Magnuson, Bonner, and Celler committee, and to cooperate with the American Steamship Committee on Conference Studies in an endeavor to try to achieve the best possible results.

A similar association has already been formed by the British lines in the United Kingdom.

It is not the intention of such an association to interfere with domestic lawmaking, but we feel an adequate organization is necessary to represent the interest of European shipowners.

It would be appreciated to hear from you within a fortnight whether you are interested and prepared to join such an association. If a great majority of the interested lines, which can safely be expected, would be agreeable in principle to the above proposal, a meeting will be arranged to take place on January 14, 2:30 p.m., at the Palace Hotel in Brussels.

The Japanese lines, NYK and OSK are expected to join the intended association as affiliated members.

For and on behalf of the aforementioned lines:

NORDDEUTSCHER LLOYD, BERTRAM.

This letter has been sent to:

Ahrenkiel & Bene, Mattentwiete 8, Hamburg 11.

Navigazione Alta Italia Societa Anonima, Via XX 28/4, Genoa.

Belgian Line Compagnie, Maritime Belge S.A., 61, Rempart Ste. Catherine, Antwerp. Companhia de Navegacao "Carregadores Acoreanos," Ponta Delgada, St. Michaels, Azores.

Concordia Line Christian Haaland, Mölervelven 6, Haugesund, Norway.

Cosmopolitan Line A/S J. Ludwig Mowinkels Rederol, Olav Kyrresgate 9, Bergen. Det Forenede Dampskibs Selskab A/S (Scandinavian American Line), Sankt Annae Plads 30, Copenhagen-K.

Fearnley & Eger (Fernville Line) P.O. Box 355, Oslo.

Finnlake Lines, Kulosaari, Brändö, Helsingfors.

Finska Angfartyges Aktiebolaget, P.O. Box 90, Helsingfors.

Cie. de Navigation Fraissinet & Cyprien Fabre, 3-15, Rue Beauvau, Marseilles.

Fruit Express Line Björn Björnstad & Co., Moss, Norway.

General Steam Navigation Co. Ltd., of Greece (Greek Line), Piraeus, Greece.

Leif Hoegh & Co. A/S, Parkveien 55, Oslo.

Home Lines Fratelli Cosulich, Via Balbi 4, Genoa.

"Italia" Societa per Azioni di Navigazione, Piazza de Ferrari 1, Genoa.

A. Kirsten, Dovenhof, Hamburg.

A. F. Klaveness & Co. A/S (Fernville Line), P.O. Box 108, Lysaker near Oslo.

N. V. Koninklijke Rotterdamse Lloyd (Nedlloyd Line), Veerhaven, Rotterdam.

A. P. Möller (Maersk Line), Kongens Nytorv 8, Copenhagen.

N. V. Stoomvaart Maatschappij "Nederland" (Nedlloyd Line), Amsterdam.

A/B R. Nordström & Co. O/Y (Nordlake Line), Lovisa, Finland.

Den Norske Amerika Linje A/S, Jernbanetorget 2, Oslo.

A/S Det O staciatiske Kompagnie, Copenhagen.

Ozean/Stinnes Linien-Gemeinschaftsdienst, Hamburg.

Ernst Russ, Hamburg.

Sartori & Berger, Hamburg.

Aktiebolaget Syenska Amerika Linier Göteborg.

Dampskibsselskabet Torm, Copenhagen.

Compania Transatlantica Espanola, Madrid.

Rederiaktiebolaget Transatlantic, Göteborg.

Westfal-Larsen & Co. A/S, Bergen.

Wilh. Wilhelsen, Oslo.

Deutsche Dampfschiffahrts Gesellschaft Hansa, Bremen.

Swedish Chicago Line, Stockholm.

Mr. KEFAUVER. To show just how effective this high-powered lobby of the international shipping cartel is, and further, to reveal why the Senate Commerce Committee version of the bill is devoid of the salutary safeguards that would protect American shippers, let me read a dispatch from the New York Times, July 31, 1961, reporting on the manner in which foreign interests have attempted to influence the form in which H.R. 6775 now appears before the Senate for consideration:

FOREIGNERS OFFER SENATE SHIP BILL—SUBMIT PLAN TO EASE RULES ON MARITIME CONFERENCES

(By George Horne)

In an action considered to be rare and possibly unique in recent legislative history in this country, representatives of foreign business interests have written a regulatory measure for a committee of Congress.

The bill, dealing with the controversial question of steamship conferences, has not been approved by the foreign interests or by any body or agency here. The chances are that it will not be introduced. And American shipping men who have been working with foreign colleagues on conference legislation hope not. They say it is so liberal, from the conference standpoint, that it will not pass.

A Senate subcommittee on merchant marine, headed by Senator CLAIR ENGLE, Democrat of California, has been considering H.R. 6775, a House bill. It is the product of several years of hearings and staff studies by committees of Congress seeking to overhaul all statutes affecting steamship conferences.

SOME EXEMPTIONS ALLOWED

The conferences make rates and try to maintain stability in their trades. For doing this they receive certain exemptions under antitrust laws. The Congress committees have found many violations in ocean-freight practices.

The House bill has been criticized by the industry generally as a destructive bill that would create "a lawyer's paradise," make the Federal Maritime Board a rate-making body, outlaw dual rates (which give discounts to faithful shippers) and drive foreign lines out of the conferences.

All of the clauses proposed by the foreigners would be highly acceptable to American steamship lines. But spokesmen for these lines said in New York yesterday that such liberal language would never be approved in the House, where sentiment leans strongly to stringent antitrust provisions and tighter regulation.

FOREIGNERS' VIEW SOUGHT

Ten days ago Senator ENGLE told some foreign witnesses at his committee's hearing to come in with some legislative language that they could live with.

Last week these foreigners wrote what amounts to a new bill, retaining little of the original but the title. The Senate panel will consider the language this week. It will hold 2 more days of hearings before it starts writing its own amendments to the House bill.

Observers who have followed the long history of this legislation believe the Senate amendments will adopt many of the foreign suggestions, but not all of them.

Senator ENGLE is eager to get the bill completed in the Senate so it can be returned to the House Committee on Merchant Marine and Fisheries. The action must be finished by September 15, when temporary legislation legalizing the dual-rate system expires.

AFFECTED BY COURT'S RULING

The dual-rate practices, without which shipping men say their conferences would be meaningless, were placed in jeopardy by a decision of the U.S. Supreme Court in 1958. The temporary measure was enacted to maintain the status quo pending the hearings and new legislation.

One prime clause in the House bill objected to by foreigners and Americans alike would, they hold, make dual rates illegal. Exports in and out of the industry agree that such a system is imperative. Another clause would extend the authority of the Federal Maritime Board to demand that foreign lines bring back to this country documents needed to investigate conference practices.

In the light of representations made by foreign nations to the Department of State, it appears likely that the Senate will delete this section before returning it to the House.

The foreign "bill" written at Mr. ENGEL's suggestion had also placed a \$5,000 limit on the money penalties that the Maritime Board could impose for certain violations. It changed a \$1,000 fine for one type of violation to "up to \$1,000." In another section it would authorize the regulatory agency to re-

mit, mitigate or waive fines or civil penalties. It also would eliminate a clause making it mandatory for the Maritime Board to approve dual rates before they were imposed.

In addition it deleted tariff filing requirements and the mandatory filing of any rate reductions 30 days in advance of their effective date.

Mr. President, while the proponents of this version of the bill have urged upon Congress the need for this legislation in order to strengthen international steamship conferences, there has been a general tendency to gloss over the many evils inherent in the cartelized conference system which this version would aid and abet. The Alexander committee which investigated the shipping industry in 1912 and 1913, acknowledged that, with respect to the conferences system, "abuses exist, and the numerous complaints received by the committee show that they must be recognized."

I refer to the Alexander report, House Document No. 805, 63d Congress, 2d session, 1914.

Representative Joshua Alexander, of Missouri, who was chairman of the House Merchant Marine and Fisheries Committee in the 63d Congress, and previous Congresses, carried on one of the most thoughtful, intelligent investigations I have had the opportunity to examine in a long time, in which this whole system was examined into, and a report was made. It was on the basis of this report and his recommendations that the Shipping Act of 1916 was passed by the Congress.

The Alexander committee proposed an elaborate set of controls to restrain the excesses of the conferences, with numerous restrictions and prohibitions, including bans against the use of fighting ships or the employment of deferred rebates, both of which practices had been employed to drive independent, nonconference carriers from the trades; prohibitions against retaliation against shippers for employing nonconference vessels; and a general condemnation of all forms of discrimination against shippers or competing nonconference carriers. These recommendations of the committee culminated in the landmark Shipping Act of 1916.

It is obvious to anyone who reads the act with care that it was designed to protect shippers and independent carriers against the unlawful practices of giant steamship conferences which were sanctioned under the act. That it has not been entirely successful is due to no fault of those who framed the law but rather to the inherent tendency of the conference cartels to abuse their power, coupled with the lack of adequate supervision on the part of the predecessors of the new Federal Maritime Administration.

That the foreign-dominated conferences have not changed their spots in the almost 50 years since the Alexander committee's investigation is demonstrated in the recent investigations of the House Antitrust Subcommittee, headed by the gentleman from New York, Representative EMANUEL CELLER. In the course of its studies over a 3-year period, the subcommittee uncovered more than 200 apparent violations of Federal laws.

MALPRACTICES AND OTHER ABUSES IN THE
OCEAN FREIGHT INDUSTRY

Since the Senate is considering a bill which will radically extend the privileges and powers of the conference system and weakens the Shipping Act of 1916, it is appropriate to call the attention of the Senate the manner in which the steamship industry has abused the privileges already granted to it under the Shipping Act of 1916. During the past 3 years, the House Merchant Marine and Fisheries Committee and the Antitrust Subcommittee of the House Committee on the Judiciary have conducted the most comprehensive investigation of competitive practices in the ocean freight industry since the classic study conducted by the Alexander committee—the House Merchant Marine and Fisheries Committee of the 63d Congress—almost 50 years ago. The hearings before the House Antitrust Subcommittee and the study of the House Merchant Marine and Fisheries Committee under the chairmanship of the Honorable HERBERT C. BONNER, of North Carolina, contain an abundance of valuable material on the subject.

Of course, the distinguished Senator from California [Mr. ENGLE], who is very knowledgeable in this subject, had further hearings on the Senate side, especially during June and August of this year.

What have all these hearings revealed? The President of the United States summarized the matter quite concisely when, in recommending to the Congress the adoption of Reorganization Plan No. 7, he observed:

Recent findings by committees of the Congress disclose serious violations of maritime laws. (Message from the President of the United States transmitting Reorganization Plan No. 7, H. Doc. No. 187, 87th Cong., 1st sess.)

And the chairman of the House Judiciary Committee and of its Antitrust Subcommittee, EMANUEL CELLER, recently commented:

I believe I can say without fear of contradiction that they have shown the essential foreign trade routes of the United States to be plagued by many of the same deplorable conditions which prompted the Alexander committee to recommend the sweeping regulatory scheme embodied in the Shipping Act of 1916. These include various types of rebating and malpractices; granting of deferred rebates; employment of many predatory devices designed to drive out independent competitors; overcharges on Government financed shipments of grain; maintenance of freight rates at levels detrimental to the foreign commerce of the United States; granting of preferences to large shippers; falsification of bills of lading; abetting the circumvention of currency regulations of friendly foreign governments; destruction or alteration of documents to hinder Government investigations and so on. (Letter to Hon. ESTES KEFAUVER from Hon. EMANUEL CELLER, Aug. 14, 1961.)

During the debate on the floor of the House with respect to Reorganization Plan No. 7 spokesmen of both parties attested to the widespread abuse and regulatory neglect which characterized the industry—volume 107, CONGRESSIONAL RECORD daily edition, July 20, 1961, at 12140–12152.

It may be asked why this discussion of malpractices and other abuses in the ocean freight industry is relevant to a debate on H.R. 6775 as reported by the Senate Committee on Commerce. In the first place, the version of that bill as passed by the House of Representatives contains provisions which would have enhanced the regulatory provisions of the Shipping Act of 1916 and strengthened their enforcement. These provisions have largely been deleted in the bill as reported by the Committee on Commerce. In the second place, H.R. 6775, if enacted as it now stands, will so inflate the power of steamship conferences and steamship conference lines that U.S. shippers and exporters, independent steamship operators and the foreign commerce of the United States will be at the mercy of the conference system. It is therefore highly pertinent to discover that this same conference system has operated as a conduit for the perpetration of practices which run directly counter to the safeguards established by the Congress in 1916 and which are detrimental to the foreign commerce of the United States.

SCOPE OF ABUSES

As a result of the hearings before the House Antitrust Subcommittee, at the direction of its chairman, some 240 matters were referred to various enforcement agencies, principally the Federal Maritime Board—now the Federal Maritime Commission—and the Department of Justice. These matters involved possible violations of Federal laws and/or conference agreements or indicated activities possibly detrimental to the commerce of the United States—letter to Hon. ESTES KEFAUVER from Hon. EMANUEL CELLER, August 14, 1961. A significant number of these items have become the subject of enforcement or rulemaking proceedings before the Federal Maritime Board. In March 1961, the then Chairman of the Federal Maritime Board, Thomas E. Stakem, reported to the House Antitrust Subcommittee that 24 of the matters referred had become the subject of formal administrative proceedings by the Board to enforce the Shipping Act; 29 had become the subject of general rulemaking proceedings aimed at preventing future recurrence of questionable practices; 18 had been referred to the Department of Justice and 45 were then the subject of further study by the Board—Antitrust Subcommittee hearings, part 3, volume II, at 1281–1283.

Only a few of these proceedings have been completed. One has resulted in the Board finding certain lines violated sections 16 and 17 of the Shipping Act in granting free or reduced passage to shippers—"Investigation of Storage Practices at Stockton," FMB Docket No. 871, June 1, 1960. In another proceeding, still pending, a Board hearing examiner has handed down an initial decision finding a violation of law by a carrier and a shipper.

In March 1961, W. Wallace Kirkpatrick, then Acting Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, testified that a large number of the items

which had been referred to the Department had become the subject of a grand jury investigation of the shipping industry—hearings, part 3, volume II, at 1246–1258. Subpenas were issued to some 150 shipping companies—both U.S.-flag and foreign—steamship agents and conferences—see Gardner, "Steamship Conferences and the Shipping Act," 1916, 35 Tulane Law Review, 129, 137, 1960. The grand jury investigation involves questions of violation of the antitrust laws and other Federal statutes. According to Mr. Kirkpatrick, the investigation covers, among other areas, secret agreements in the inbound trade from Japan, in the trade between the United States and Africa; the possible use of deferred rebates expressly prohibited by the 1916 act and "fighting rates" in the trade from Mexico and the United States to Europe; and the disclosure of traffic information which could be used to the detriment of shippers and competing carriers in violation of section 20 of the Shipping Act—hearings, part 3, volume II, at 1246–1247. Significantly, with respect to the inbound trade from Japan Mr. Kirkpatrick testified:

There is evidence that the reason the lines operated under secret agreements, rather than submitting them for Board scrutiny was that the lines wanted to influence the decision of the Supreme Court of the United States in the Isbrandtsen dual-rate case * * * They hoped to do this by appearing to be engaged in chaotic rate competition as a result of having been enjoined from using the dual-rate system. (Id. at 1246–47).

It has been reported that indictments are being drawn by the grand jury in this investigation.

Despite these indicia of the pervasive extent of malpractice in the conference system, some spokesmen for the industry apparently view the record which has been amassed by the congressional investigations with a sense of satisfaction. Mr. Ira Ewers, recently testifying on behalf of the administrative law division, Maritime Law Association of the United States, before the House Merchant Marine and Fisheries Committee, stated:

My recollection is that the foreign commerce of the United States, import and export, is somewhere in the magnitude of \$32 billion a year and if you can only find 40, 50, or 200 violations of that volume of transactions, I think it is a record to which you should point with pride. (Hearings before the House Merchant Marine and Fisheries Committee, Reorganization Plan No. 7 of 1961, 87th Cong., 1st sess., 154.)

It is patently clear that this observation misconceives the scope and meaning of the revelations of the congressional investigations. Many of the matters which were referred to the Federal Maritime Board or the Department of Justice by the Antitrust Subcommittee as a single item embraced countless individual transactions involving a possible malpractice; the matters referred to by the Antitrust Subcommittee frequently represented not unique and isolated deviations from law but a course of dealing that permeated an entire trade over a long span of years. Thus, the Antitrust Subcommittee studied the recent history of the so-called WINAC trade between

Italy, Sicily and North Atlantic ports of the United States. It found in this trade that it was a common practice to grant fidelity commissions to shippers or freight forwarders. These fidelity commissions were very much like the deferred rebates which were declared illegal by Congress in the Shipping Act of 1916. The use of these commissions, as well as the employment of a complicated hierarchy of secret and discriminatory rebates, stretched over a period of 8 years—hearings, part 2, volume I, at 47-69. Indeed, a responsible official of American President Lines, commenting on the status of this trade, observed:

The prohibition of the Shipping Act of 1916 against deferred rebates has been violated in one way or another almost continuously since the law was passed. (Hearings pt. 2, vol. I, at 138.)

In a similar vein, an official of another steamship line indicated that abuses were the rule rather than the exception in the Far East trade. He states in an interoffice memorandum:

As to malpractices, all the agreements in the world, plus bonds posted, plus conference memberships, will not prevent the Japanese lines from exercising the malpractice policy. (Hearings pt. 1, vol. II, at 1214.)

CONFESSIONS OF LINE OFFICIALS

Other commentators or representatives of the industry have recognized the existence of the widespread abuse which the hearings have demonstrated. Writing in the Tulane Law Review in December 1960, Mr. Warner Gardner, an eminent maritime lawyer, put it quite succinctly, remarking:

The regulatory provisions of the (shipping act have until 1960 largely been ignored. (Gardner, "Steamship Conferences and the Shipping Act," 1916, 35 Tulane L. Rev. 129, 132 (1960).)

During the recent congressional hearings high officials of American steamship lines were frequently heard to express remorse and shame when the malpractice violative of their company principles were disclosed. Thus, it was revealed that United States Lines had granted what were conceded to be immediate rebates on freight charges on eastbound shipments of logs to Swiss importers, by means of secret refunds and corrections of shipping documents. When material dealing with this practice was presented, Mr. W. B. Rand, the vice president of the United States Lines testified:

It is extremely distasteful, and I am personally ashamed of it. It is not within our company principles to behave in this manner. (Hearings pt. 1, vol. II, at 1456.)

Nevertheless, the practice apparently was carried on by Mr. Rand's company from 1954 to 1959—hearings, part 1, volume II, at 1446-1458.

To take another instance, it appears that in 1958 States Marine Lines granted a secret refund on a shipment of cotton to an important shipper of that commodity. (Hearings, pt. 1, vol. III, at 2301-2308). A hearing examiner of the Federal Maritime Board has recently issued an initial decision finding that both the shipper and the carrier thereby violated section 16 of the Shipping Act—"States Marine Lines, Hohenberg Brothers, Violation of section 16," FMB Docket

No. 892, January 28, 1960. When this transaction was brought to light at a session of the Antitrust Subcommittee hearings, the president of States Marine Lines conceded that it constituted "a clear-cut violation of our conference agreement" and stated:

I don't want to make any excuse for it, because it was wrong, our people were wrong. Ethically, morally and every other way. (Hearings, pt. 1, vol. III, at 2301.)

Indeed, almost all of the representatives of the industry and of the conferences testified to serious malpractice problems in their trades and conceded the need for a general housecleaning. Such pious statements by top officials after the facts are revealed sound much like those by similar officials in the electrical equipment industry after the antitrust indictments.

DEVICES EMPLOYED TO EFFECT MALPRACTICE

An amazing variety of devices have been utilized on the foreign trade routes of the United States in order to effect rebates and other malpractices. A good number of these were summarized in an illuminating memorandum prepared by a veteran steamship company official for the education of his superiors, who purported to describe the methods which he understood were employed in certain routes to the Orient. The list includes:

1. Cash paid.
2. Issuance of correction notices (with no copies to the Conference), reducing the measurement or the weight of the shipment, or the rate.
3. Free ocean trips for the client, his family or his friends.
4. Financing trips abroad for the client or members of his family.
5. Lavish entertainment.
6. Establishment of credit at a nightclub or bar for the client.
7. Expensive gifts such as a new car, jewels, radios, TV sets, refrigerators, a house, or expensive curios.
8. Establishment of a pension for the client for a given time.
9. Payment for the education of client's child or children at a boarding school or college.
10. Gifts of stocks or bonds, either of the steamship line involved or purchased at an investment house or other corporation.
11. Purchase of land for the client.
12. Establishment of credit at a grocery store, meat store, or provision store.
13. Purchasing of supplies manufactured by the client which can be used aboard ships etc., at prices above those competitive. (Hearings, pt. 1, vol. II, at 1217.)

Mr. President, this list is far from exhaustive in revealing the media through which the art of malpractice is carried on. For example, it was revealed that in the trade between the Philippines and the United States, certain steamship lines participated in a scheme which operated so as to permit shippers to circumvent the exchange regulations of the Philippine Government. The practice involved the issuance of false bills of lading. The company would accept a bill of lading on a shipment from the Philippines which understated the actual amount of the commodity shipped. When the cargo was unloaded in the United States, the shipper would obtain dollars for the entire shipment. However, he needed to

account to the Philippine Government only for those dollars which he had received for the shipment as understated in the bill of lading. The remaining dollars would be free of exchange controls and could be sold on the black market. Correction notices issued by the steamship lines showing the actual weight were kept in the United States because, as an official of a steamship line engaged in the practice explained:

Should a copy of these correction notices fall into the wrong hands both (the shipper) and ourselves would be seriously embarrassed with the exchange control authorities there. (Hearings, pt. 2, vol. I, at 328). (The entire document appears, hearings, pt. 2, vol. I, at 429.)

THE EVILS OF MALPRACTICE

It ill behooves the United States to countenance and promote a conference system in which violations, malpractices, and other forms of abuse are the rule rather than the exception and the shipping laws are more honored in their breach than their observance. It is true that Congress has granted limited recognition to the conference system. However, that recognition was based on a clear finding by the Alexander committee that conferences would redound to the benefit of the United States and its foreign commerce only if such conferences were, in the words of the Alexander committee, "honestly and fairly conducted"—Alexander committee report, House Document No. 805, 63d Congress, 2d session 416, 1914. The committee further stated:

The committee believes that the disadvantages and abuses connected with steamship agreements and conferences as now conducted are inherent, and can only be eliminated by effective Government control; and it is such control that the committee recommends as the means of preserving to American exporters and importers the advantages enumerated, and of preventing the abuses complained of.

The Shipping Act of 1916 embodied the hope that these abuses could be avoided through effective Government control. But history has proven this hope to be vain. The recent congressional investigations disclose that by and large the conferences have not been "honestly and fairly conducted." The Government controls imposed were not sufficient to ward off abuse. Instead, it is frequently said that a Government agency no matter how well staffed cannot police this industry. As Warner Gardner, a practicing maritime lawyer, put it in a recent article:

In the absence of a general tradition of scrupulous adherence to the law, it is extremely doubtful if the regulator job could be done thoroughly with 1,000 investigators (35 Tulane L. Rev., 125, 135).

Yet it is now proposed that; first, the power of this untidy and unruly conference system be immeasurably enhanced by use of dual-rate contracts that would permit the elimination of independent competition; second, that provisions strengthening the powers of the Board to enforce the act be stricken from H.R. 6775 as passed by the House; third, that the Shipping Act be weakened by the dilution of some very essential protective provisions which were established

by Congress in 1916; and, fourth, that provisions of the House bill for the protection of competition and shippers be eliminated.

It has also been demonstrated that a conference system in which these abuses persist is detrimental of the foreign commerce and contrary to the public interest. Acts of malpractice, whether technically constituting an infraction of law or merely a breach of a conference agreement, are frequently operated in an invidiously discriminatory fashion. Such acts discriminate against small shippers, and favor powerful shippers able to command the routing of large quantities of cargo. Thus, on one occasion a secret refund was granted by a steamship line to a large shipper who "supported" the line whenever possible—hearings, part 1, volume III, at 2301, 2304. On another occasion, by the admission of its president, the same steamship company predated a bill of lading to allow a "large" and "important" cotton shipper to obtain a lower rate—hearings, part 1, volume III, at 2275. In connection with the reorganization of the Continental/North Atlantic Freight Conference, a sliding scale of brokerage payments which, according to a document in the records, "would secure 5-percent brokerage for the most important brokers" was promoted—hearings, part 3, volume I, at 309. In the Spanish trade, a system of discriminatory rebating was in force for a number of years. The details of this system were embodied in a document describing the shippers who were to receive the normal commission and those who were to receive an additional amount. For example, from the port of Alicante, the document reveals that a 5-percent commission was regularly granted to all shippers "except" four named shippers who received 10 percent—hearings, part 1, volume V, at 4842-4845. In granting free or reduced passage to shippers or their families or transporting the property of shippers free or at reduced rates, the lines established criteria based on the amount of business which the shipper had given or could give. Thus, Holland-America Line determined that only those bulb shippers who had paid freight in the amount of \$2,000 or more should be considered important enough to be eligible to receive transportation of their automobiles abroad at a reduced rate—hearings, part 2, volume II, at 1613, 1689.

Ports in the United States have also suffered discriminations. In a recent decision, the Federal Maritime Board ruled that certain lines had discriminated against a number of California ports and in favor of the California ports of Stockton and Oakland by granting unlimited free storage to shippers at the latter ports—"Investigation of Certain Storage Practices of Pacific Far East Line, Inc., Trans-Oceanic Agencies, States Steamship Co., and Howard Terminals at the Ports of Stockton and Oakland," FMB Docket No. 871, June 1, 1961. As to certain respondents in the proceeding, the Board concluded that:

PFEL (Pacific Far East Lines) as a common carrier by water in conjunction with another person, and indirectly * * * (a)

gave undue preference and advantage to inbound traffic through the Port of Stockton and thereby subjected other ports such as San Francisco to undue prejudice and disadvantage (id., slip opinion at p. 11).

Moreover, the widespread incidence of rebating and other malpractice has frequently operated to the detriment of the U.S.-flag merchant marine. It seems to be generally conceded that U.S.-flag steamship lines are at a serious disadvantage in the game of malpractice as it is played in the international ocean freight industry. Foreign-flag lines are generally far less vulnerable to the regulatory provisions of the Shipping Act than their American-flag competitors. The documents of these foreign-flag lines have heretofore been beyond the reach of the Federal Maritime Board, and the malpractices in which they have engaged have frequently been consummated abroad. Thus, these lines are often able to enjoy the fruits of participation in the foreign trade of the United States without the burden of having to comply with U.S. shipping laws. Mr. George Killion, the chief executive of American President Lines, touched on this point in a letter dated March 14, 1960, to Mr. James L. Pimper, then Secretary to the Federal Maritime Board:

We consider that American President Lines is among the group of U.S.-flag lines which has rather consistently been pressing for the elimination of malpractices. Our review of the documents selected by the Celler committee indicates that we have nevertheless been forced on a few occasions into precisely those malpractices to which we are opposed. The only alternative, on each of these occasions, has seemed to be withdrawal from the trade in question. In a much larger group of trades, American President Lines (and other lines as well) has refused to meet the malpractices of some of its competitors and has in consequence been placed under a severe competitive disadvantage.

It is to the heavy interest of American President Lines, and a majority of the U.S.-flag lines as well, that the terms of the conference agreements and of the 1916 act be scrupulously observed. We have ships and service as good as any of our competitors, and expect to come out ahead in any competitive struggle which is waged on fair terms. (Hearings, pt. 2, vol. I, at 307.)

REASONS FOR MALPRACTICE

Some representatives of the steamship industry have tended to attribute the abuses found by the Antitrust Subcommittee to "weak" conferences and the absence of effective tying arrangements. Yet the hearings before the subcommittee demonstrate that flagrant violations and malpractices have taken place prior to 1958—when the Isbrandtsen decision placed in doubt the validity of dual-rate systems—in trades in which tying arrangements were in effect. For many years rebating was practiced on a grand scale in the Italian trade—the so-called WINAC trade—where not only a dual-rate system but also a tying arrangement was known as a fidelity commission system prevailed—hearings, part 1, volume I, at 49 and the following. Rebates were paid to shippers in the Philippine trade in 1954 where the conference—the Associated Steamship Lines—had instituted a dual-rate system which was then in force—hearings, part 2, volume I, at 160; part 1, volume I, at 741. An inter-

office memorandum from a steamship line official cognizant with the situation suggests that the continuing malpractice was due not to the absence of a tying arrangement but to the lack of forthright conference action:

The logical place to stop this infraction of conference regulations is in ASSL (Associated Steamship Lines, the conference) but you feel it is hopeless. We are inclined to criticize ASSL for being so spineless. No line has the courage to take the bull by the horns. Evidently discretion is the better part of valor. (Hearings, pt. 2, vol. I, at 200.)

Thus, the notion that discrimination and malpractice can be eliminated if only Congress legalizes the use of an unlimited dual-rate system cannot be accepted as sound. The cause of these abuses are far more complex. The industry suffers from a history of woefully inadequate regulation by the Federal Maritime Board, long standing disregard of the shipping laws by steamship lines and agents, and conferences, contrary to rudimentary concepts of fairness as laid down in U.S. shipping policy. This was made clear in the two House hearings. Yet, it is under these circumstances and against this background that still more power is to be given to the industry and to the steamship conferences without adequate safeguards to temper this power or to insure that the proliferation of abuses which have been found will not continue.

Mr. President, this is a very vital and important matter to the shippers and the shipping companies of this Nation. I know there are several Senators who would like to hear the discussion. In order to give them an opportunity of knowing what is going on, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, will the Senator from Tennessee yield to me?

Mr. KEFAUVER. I am happy to yield, provided I do not lose the floor.

Mr. MANSFIELD. Mr. President, in conjunction with the distinguished minority leader, and after touching all bases, I should like to propound a unanimous-consent request. It is my understanding that the Senator from Tennessee wishes to discuss the shipping bill for about 40 minutes more.

Mr. KEFAUVER. I can discuss it for several hours, or I can discuss it for 1 hour.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at 5 o'clock this afternoon the Senate lay aside the pending business and that at that time the Senate proceed to the consideration of Calendar No. 853, S. 2426, to revise the Federal election laws, to prevent corrupt practices in Federal elections, and for other purposes.

In the meantime, if that request shall be agreed to, I wish to propound, on

behalf of the distinguished minority leader and myself, and with the full concurrence of the Senator from Tennessee [Mr. KEFAUVER] and the Senator from California [Mr. ENGLE], a unanimous-consent request that beginning at the conclusion of the morning hour tomorrow the debate on Calendar No. 842, H.R. 6775, be limited to 1 hour on amendments and 1 hour on the bill, the time to be equally divided, the proposal to be reduced to writing in the usual, regular form.

Mr. KEFAUVER. Mr. President, will the Senator yield for an inquiry?

Mr. MANSFIELD. I yield.

Mr. KEFAUVER. Does the Senator mean 1 hour on each amendment, the time to be divided equally?

Mr. MANSFIELD. Yes; 1 hour on each amendment, the time to be divided equally.

Mr. KEFAUVER. That is satisfactory to me.

Mr. RUSSELL. But that reservation does not apply to Calendar No. 853, S. 2426, does it?

Mr. MANSFIELD. Oh, no.

Mr. ENGLE. May I inquire about the time on amendments? Some 13 amendments are at the desk. I thought the distinguished Senator from Tennessee was willing to accept 15 minutes on each side on his major antitrust amendment. May we have that agreement?

Mr. KEFAUVER. I expect to offer three antitrust amendments. That will mean 30 minutes to a side. Some other amendments might take more than 15 minutes on a side, but we will try to be as brief as possible and yield back any time we do not use. I hope the Senator from California will accept about half the amendments.

Mr. JAVITS. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. JAVITS. I had in mind asking the Senator a question about Calendar No. 853, S. 2426. Is it intended to try to finish the consideration of S. 2426 tonight?

Mr. MANSFIELD. Not necessarily.

Mr. JAVITS. I am considering offering an amendment which may result in considerable debate.

Mr. MANSFIELD. I think the Senate should not remain in session too long tonight; I simply wished to indicate that S. 2426 would be the next business before the Senate. If Senators wish to make speeches, they may do so, but I assume there will be no votes tonight.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

(The unanimous-consent agreement, reduced to writing, is as follows:)

UNANIMOUS-CONSENT AGREEMENT

Ordered, That, effective on Thursday, September 14, 1961, at the conclusion of routine morning business, during the further consideration of the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, debate on any amendment, motion, or appeal, except a motion to lay on the table, shall be limited to 1 hour, to be equally divided and controlled by the mover of any such amendment or motion and the

majority leader: *Provided*, That in the event the majority leader is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or some Senator designated by him: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the majority and minority leaders: *Provided*, That the said leaders, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, motion, or appeal.

Mr. KEFAUVER. Mr. President, from the viewpoint of protecting the Government of the United States from unreasonable and discriminatory charges which have grown out of the conference system, which protection would be afforded by amendments I shall offer including the language of the House bill, I wish to give Senators an actual example of discrimination which has been practiced on the United States, and is in effect. I could also use other specifics than this one.

MALPRACTICE AGAINST THE UNITED STATES—OVERCHARGES ON SHIPMENTS OF GOVERNMENT FINANCED GRAIN

There is one aspect of this conference situation which has received little publicity, which has been only partially investigated so far, but which would militate against any undue solicitude on the part of the U.S. Government toward the cartels. I refer to the fact that the conferences have not only widely employed discriminatory practices toward private American exporters and importers but also against the Government itself. The extent of these practices is unknown but their clear existence has been amply demonstrated.

During the course of the hearings before the House Antitrust Subcommittee, its chairman, Representative CELLER, requested the Comptroller General of the United States to report on "(w)hether the U.S. Government is or has been paying in excess of the prevailing market rate, or in excess of charges to private shippers for comparable shipments, for ocean transportation of grain under the foreign aid program—hearings, part 3, volume II, at 927.

In response to this request, the General Accounting Office conducted a study of certain grain shipments made aboard U.S.-flag vessels for the account of the United States during 1957, 1958, and 1959, and in March of 1961, the Comptroller General of the United States, the Honorable Joseph Campbell, appeared before the Antitrust Subcommittee and reported on the results of this investigation—hearings, part 3, volume II at 926-953. Mr. Campbell told the subcommittee that, according to the findings of the GAO, two U.S.-flag carriers, Lykes Brothers Steamship Co. and Bloomfield Steamship Co., had charged rates on ICA financed grain shipments moving from gulf ports to Germany in excess of the rates charged commercial shippers between the same points. Mr. Campbell's statement summarized the findings of

the GAO as follows—hearings, part 3, volume II, at 940-942):

With respect to grain shipments during 1958 and 1959, from U.S. gulf ports to Germany, financed by the International Cooperation Administration, we found instances in which two carriers charged the Government at rates in excess of the rates charged commercial shippers between the same points. Had the Government shipments moved at the rates charged commercial shippers during this period, we estimate that transportation charges to the Government would have been reduced by \$305,000.

The estimated reduction is comprised as follows:

	1958	1959	Total
Bloomfield Steamship Co.....	\$141,003	\$129,377	\$270,380
Lykes Bros. Steamship Co., Inc.....	-----	34,731	34,731
Total.....	141,003	164,108	305,111

Our review of grain shipments during calendar year 1958 revealed that the Bloomfield Steamship Co. transported grains from U.S. gulf ports to Germany for commercial shippers at rates ranging from a low of \$4.50 per ton to a high of \$9.25 per ton, whereas, on Government-financed shipments of grain during the same period, Bloomfield Steamship Co. rates to the Government ranged from \$10.50 to \$13.50 per ton. Had the Government shipments moved at the rates charged commercial shippers during this period, we estimate that transportation charges to the Government would have been reduced by \$141,003.

For instance, in our examination of records covering 1958 shipments, we found that bills of lading were issued by Bloomfield for the transportation of both Government-financed and commercial wheat on the SS *Neva West*, voyage No. 7-S, sailing from Houston, Tex., and Galveston, Tex., to Germany in May 1958. The rate charged to the commercial shipper for wheat on this voyage was \$6.75 per ton for 1,655 tons, while the rate paid by the Government was \$12.50 per ton for 5,250 tons. The total charge to the Government for wheat aboard this vessel was \$65,625. Had the Government been charged the commercial rate of \$6.75 per ton, transportation charges to the Government would have been reduced by \$30,188.

Our examination of other payments revealed a shipment in August 1958 of 2,000 tons of Government-financed wheat from Galveston, Tex., to Hamburg, Germany, on the Bloomfield vessel SS *Margaret Brown*, voyage No. 9-S, for which Bloomfield charged the Government at a rate of \$10.50 per ton. On the same vessel between the same points, a commercial company shipped approximately 4,543 tons of barley for which Bloomfield charged at a rate of \$9.25 per ton.

Mr. President, as a result of Justice Department action following these disclosures, it is understood that Lykes Brothers has settled a claim in the amount of \$34,731.36 presented by the Government on account of alleged overcharges of freight for the carriage of Government-financed cargoes of grain to Germany—hearings, part 3, volume II, at 960. Lykes explained to the chairman of the Antitrust Subcommittee that this claim was settled in order to avoid litigation with the Government with respect to the meaning and application of the ICA supplier's certificate, which it signed in connection with the shipments which

it transported for the ICA—hearings, part 3, volume 1, 955-959.

In a further report, dated August 5, 1961, ICA supplemented its earlier material as follows:

There was not available to ICA at the time of the committee's inquiry information upon which to determine whether any freight

charged on 1960 parcel-lot shipments of grain at "open" rates exceeded the limitations of regulation 1. To fill this lack, ICA undertook a thorough search of its records and identified all ICA-financed liner shipments of grain during 1960 at "open" rates, the name of the vessel, port of loading, port of discharge, and the name of the carrier.

Attached hereto as exhibit A is the results of this investigation. I ask unanimous consent to have this exhibit placed in the RECORD at this point.

There being no objection, the exhibit was ordered to be printed in the RECORD, as follows:

EXHIBIT A

ICA-financed parcel lot movements of grain during calendar year 1960

Name of vessel	Voyage No.	Port of loading	Port of discharge	Name of vessel	Voyage No.	Port of loading	Port of discharge
I. AMERICAN PRESIDENT LINES				V. STATES MARINE LINES, INC.—CON.			
President Garfield	9	Stockton	Inehon.	Steel Scientist	16	Portland	Pusan.
II. BLOOMFIELD STEAMSHIP CO.				Palmetto State	70	do	Bremen/Rotterdam.
Lucille Bloomfield	21	Galveston	Emden.	Bayou State	3	do	Hamburg.
Neva West	18	do	Bremen.	Steel Surveyor	15	Portland/Longview	Weser.
Lucille Bloomfield	22	Houston	Hamburg.	Ocean Deborah	21	Longview	Do.
Margaret Brown	20	do	Bremen.	Rebecca	19	Houston	Hamburg/Bremen.
Neva West	20	do	Do.	VI. STATES STEAMSHIP CO.			
Alice Brown	21S	do	Bremen/Rotterdam.	Wyoming	64W	Seattle	Keelung.
Margaret Brown	21S	do	Do.	VII. UNITED STATES LINES CO.			
Do	22S	do	Bremen.	American Pilot	48	Baltimore	Hamburg/Bremen.
Neva West	22	Galveston	Do.	American Traveler	111	Norfolk	Do.
Lucille Bloomfield	26	do	Emden.	American Scout	107	do	Bremen.
Margaret Brown	23	do	Do.	American Ranger	112	Baltimore	Rotterdam.
Neva West	23	do	Do.	American Merchant	113	do	Hamburg/Bremen.
III. LYNES BROS. & CO., INC.				American Reporter	95	Baltimore/Norfolk	Do.
Elizabeth Lynes	64	Houston	Bremen.	American Shipper	115	Norfolk	Do.
Aimee Lynes	53	Port Arthur	Piraeus.	American Gunner	52	Baltimore	Rotterdam.
Helen Lynes	60	do	Barcelona.	American Pilot	51	do	Hamburg/Bremen.
IV. PACIFIC FAR EAST LINES				American Traveler	114	Norfolk	Bremen.
China Bear	70	Stockton/Oakland	Inehon/Pusan.	American Pilot	52	New York	Hamburg/Bremen.
V. STATES MARINE LINES, INC.				American Scout	109	Baltimore	Do.
Sooner State	2	Galveston	Bremen.	VIII. WATERMAN STEAMSHIP CORP.			
Robin Mowbray	12	Vancouver/Portland	Hamburg/Weser.	Hastings	82	Houston	Bremen.
Ines	13	do	Hamburg/Weser/Bremen.	Morning Light	164	Houston/Galveston	Emden.
				Maiden Creek	74	Seattle	Pusan.
				Choctaw	62W	Portland	Do.
				Fairport	75W	do	Do.
				Maiden Creek	75W	do	Inehon.
				Warrior	83	Galveston	Bremen.

NOTE.—Inquiries were sent to all carriers reported above and replies have been received with the exception of the United States Lines Co.

Mr. KEFAUVER. Mr. President, I read further from the report:

It will be noted that eight separate steamship lines were involved in ICA-financed grain carriage of the type here being considered. Letters were then sent to these eight companies asking each to identify all grain cargoes carried for private shippers at "open" rates during a 30-day period before and a 30-day period after each carriage of an ICA-financed cargo by the carrier questioned. The carrier was expressly asked to identify any private cargo carried on the same voyage of the vessel on which the ICA-financed cargo was transported. In each case the carrier was asked to supply the rates charged the private shipper.

The purpose of this inquiry was to determine of each carrier whether, during any period 30 days before or after a given ICA-financed shipment by it, that carrier also transported a privately financed cargo at a rate lower than the rate charged ICA. This information would, of course, be the basis for determining whether any carrier had violated its certification that the rate charged ICA did not exceed the rate paid to the supplier for similar services by other customers similarly situated.

To date, ICA has received replies from seven of the eight steamship companies contacted, and further steps are being taken to elicit a reply from the one remaining company. These replies disclose that only on two occasions did the steamship companies questioned carry private cargoes during a

60-day period in which they were also engaged in an ICA-financed carriage. In each case the private cargo was carried on the same voyage of the vessel transporting the ICA-financed cargo, and in each case the private cargo was carried at a lower rate than the ICA-financed cargo.

In these cases a further investigation is being made to determine whether the private carriage was strictly comparable to the ICA carriage and claims will be filed in the event the comparability of these shipments is established. In this connection, the maximum recovery possible is approximately \$18,000. In addition, the possibility exists that by a comparison of shipments of one of the steamship lines for a 90-day period rather than a 60-day period, additional recoveries may be possible totaling approximately \$73,800.

In addition to the investigation of the charges by the carriers mentioned above, it is necessary to make such additional investigation of the open rate liner market for grain shipments as will determine whether the 1960 ICA-financed shipments in question were in compliance with the prevailing rate requirement of regulation 1. This study, which will involve the collection of a representative sample of open rate liner charges for grain in the period of the ICA-financed shipments, will require a canvass of carriers by mail and probably some field investigation following. The result of this study will be forwarded to the committee as soon as available.

I think that this ICA material speaks for itself; the U.S. Government need shed no crocodile tears over the thought of regulating the international cartels.

PREDATORY PRACTICES DIRECTED AGAINST NON-CONFERENCE COMPETITION

The record developed by the House Antitrust Subcommittee indicates that the conference lines have waged an almost continuous battle against independent or nonconference competitors, and have engaged in practices which were designed to curtail or eliminate independent competition. To cite one well known example, the Supreme Court decision in the Isbrandtsen case was based on a finding that the members of a steamship conference—the Japan/Atlantic Gulf Freight Conference—had instituted a dual-rate contract system in order to stifle the independent competition of the Isbrandtsen Co. (356 U.S. at 493). Conferences and conference members have utilized, or considered the utilization of, a plethora of other devices designed to curtail, injure or eliminate the independent. These devices almost invariably involve concerted action against the nonconference competitor with the full power of a conference or grouping of regular lines being applied against a single competitor. Joint action of con-

ference members to secure the boycott of an independent was one approach. For example, in the trade between the United States and South Africa a non-conference service under the name of Baron Line has been operated from time to time. During 1957 and 1958 the regular lines in the trade—which included three American-flag and several foreign-flag lines—were concerned with the Baron Line and made attempts to counter its competition. After consorting together to determine what steps to take in this direction, the regular lines agreed to reduce their rates to such a point that they could approach shippers and demand that Baron Line be boycotted—hearings, part 1, volume IV at 4238-39. Subsequently, a high official of one of the regular lines indicated in an inter-company communication:

As you are aware, Baron Lines are advertising two steamers for the month of June. I have had several talks with our various competitors; namely Moore-McCormack, Safmarine and Lykes regarding this competition.

First of all, we have sold Moore-McCormack on the idea that we should both work closely together to try and kill off the Baron Line and then go back to our own private battle. (Hearings, pt. 1, vol. IV at 4298; full document at 4314.)

While officials of these lines denied that this communication stated the purpose of their activities, the record of the Antitrust Subcommittee hearings on this point contains contradicting statements—hearings, part 1, volume IV, at 4298-4308.

Again certain nonconference competition in the North Atlantic trade, other devices were employed. On one occasion, the non-conference operator secured a shipment of lard at \$1 per hundred pounds. The conference members with the exception of one, agreed to reduce the rate to 55 cents per hundred pounds—hearings, part 1, volume II, at 1495-1496. The purpose of this step was to discourage the nonconference competition from becoming established—hearings, part 1, volume II, at 1495.

In the Isbrandtsen case, Mr. Justice Brennan described the fighting ship as the "crudest form of predatory practice" which the Alexander Committee brought to light (356 U.S. at 488). The Shipping Act of 1916, of course, outlaws this practice. As defined in the act, a fighting ship is a "vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade." As commonly understood, a fighting ship was a vessel of one of the conference lines which the conference would select to sail on the same days and between the same ports as the non-conference vessel. Rates on the fighting ship would be reduced low enough to garner the trade from the nonconference vessel. The expenses and losses from the voyage were shared by the conference members. When the outsider had been driven out the conference would be free to raise its rates to a point where it could make up the loss (356 U.S. 488).

It appears that devices similar in their nature and impact to this most predat-

tory of practices have been used by the conferences. The modern version apparently passes under the name of fighting committee or emergency rate committee. A fighting committee is a committee of steamship line representatives authorized to commit the conference to any rate quotation necessary to preserve for the conference lines shipment of a particular commodity which a nonconference operator is seeking—hearings part 1, volume II, at 1517. In June of 1959 it appears that such a committee, denominated a special ratemaking committee, was formed; its objective was spelled out in succinct terms:

The elimination of Mamenic Line from the North Atlantic trade.

Take away from Meyer Line those commodities which they are carrying in volume and of which the conference lines are handling only small quantities.

The Meyer Line which was the object of this attention is a nonconference operator plying the North Atlantic trade routes. Some steamship conference operators claim that independent lines are irresponsible, do not provide valuable service; and have an advantage over conference lines because they charter rather than own their vessels. A high official of United States Lines, a large conference operator, testified freely that Meyer Line was a respected and valuable member of the shipping fraternity, albeit nonconference. Mr. Rand stated:

The Meyer Line is a very reputable outfit. They charge as far as I can tell you now, almost an even 10 percent under conference rates. They provide a weekly sailing between continental Europe, and the east coast, and they provide in return a weekly sailing from the east coast to continental Europe * * * They put a lot of money in their ships * * * and they have built up a large organization. They are providing an excellent service * * *. Meyer will stay with us, and we are perfectly happy to have him, because he is not trying to underquote all our rates * * *. As far as I am personally concerned, he can stay there just as long as he wants. We will, of course, try to get him into the conference. We have done so before unsuccessfully, but we will not relinquish our efforts. (Hearings, pt. 1, vol. II, at 1627.)

Despite all these glowing accolades for the Meyer Line and the excellence of its service, documentary material in the printed record of the Antitrust Subcommittee hearings would indicate that certain influential conference lines have been for years conspiring to restrict and stifle the independent competition of this line.

During the period 1953 to 1955, attempts were being made to induce two powerful German steamship lines—the North German Lloyd and the Hamburg-American Line—to join a conference operating between the North Atlantic ports of the United States and the Continent. As a condition to their entry, the German lines wanted the conference to adopt a method to curtail or stifle the independent competition of Meyer. In communications between these lines and their general agents, they appear to have considered the possibility of the conference waging limited warfare against Meyer in order to make things sufficiently

difficult for Meyer to force him to restrict his sailings to not more than two per month or taking drastic rate action against Meyer "to convince Meyer of the error of his ways"—hearings, part 3, volume 1, at 295. At one point it was suggested that a delegation of German lines and certain conference lines should be sent to "seriously warn Meyer not to increase his sailings" or to overdo his activities—hearings, part 3, volume 1, at 297-299.

In the end the German lines took the position that to deal with Meyer the conference must establish a committee which was apparently similar to the fighting committee—referred to above—and a somewhat more sophisticated version of the fighting ship principle. The committee was to be called an emergency rate committee and was described as follows:

The Emergency Rate Committee should consist of three lines only and decide with two-thirds majority (the chairman having no right to vote) and making definite decisions about rates without asking the owners. The Committee must have the right to induce fighting rates not only for substantial parcels but must have free hands to fight Meyer and Mitsui (another nonconference operator) the way they feel it effective without unnecessarily cutting the rates. (Hearings, pt. 3, vol. I, at 326.)

It was also proposed that such a committee be established in the corresponding westbound conference on the grounds:

We need a two-edged sword to cut Meyer down. (Hearings, pt. 3, vol. I, at 305.)

It appears that the conference did establish the emergency rate committee in 1955—hearings, part 3, volume I, at 341, 342.

Is this the kind of practices we want to legalize, and are they reconcilable with our basic economic policy?

PROGNOSTICATION

It is obvious, from this sampling of the practices of conferences and the record compiled by the Celler committee, that these steamship conferences authorized under the Shipping Act have been prone to abuse their authority. Their history is replete with instances where they have acted contrary to the public interest and in open violation of law. Yet it is to the not-so-tender mercies of these foreign-dominated cartels, which have repeatedly demonstrated their irresponsibility in the past, that the present bill would leave our thousands of shippers—with wholly inadequate safeguards.

Let us examine the power which these foreign dominated steamship conferences would be able to wield over American shippers if this bill is enacted as presently drawn. In the first place, sanctioning of the dual-rate contract will allow the conferences to obligate thousands of American shippers to employ their vessels exclusively and to abide by all other clauses contained in dual-rate agreements. Exactly how many American shippers will fall into the coils of the conferences, if the system is finally legalized, is unknown, but the number would appear substantial according to figures in a table which at best are an

approximation for a representative sampling of conferences only.

Mr. President, I ask unanimous consent that the table be printed at this point in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Dual-rate contracts of selected steamship conferences in the foreign commerce of the United States

Conference:	Approximate number of contracts
Pacific Westbound.....	4, 100
Pacific Coast European.....	3, 500
Pacific Coast Latin America ¹	3, 500
Pacific Straits }.....	3, 500
Pacific Indonesian }.....	
Trans-Atlantic ²	35, 000
India, Pakistan & Burma	
Outward.....	6, 500
River Plate and Brazil ³	8, 000
Associated Latin America ⁴	60, 000
Atlantic and Gulf Indonesia }.....	5, 000
Atlantic and Gulf Malaya }.....	
Gulf Associated ⁵	6, 233

Source: Bonner committee hearings, passim; hearings before the House Committee on Merchant Marine and Fisheries on H.R. 12751, 85th Cong., 2d sess., passim (1958).

¹ Includes the following conferences which employ dual rates: Canal, Central America Northbound Conference, Capca Freight Conference, Colpac Freight Conference, Pacific Coast/Caribbean Seaports Conference, Pacific Coast/Mexico Freight Conference, Pacific Coast/Panama Canal Freight Conference, Pacific/West Coast of South America Conference, Pacific Coast River Plate Brazil Conference, West Coast of South America/North Pacific Coast Conference.

² Includes the following conferences which employ dual rates: North Atlantic Baltic Freight Conference, North Atlantic Continental Freight Conference, North Atlantic French Atlantic Freight Conference, North Atlantic Mediterranean Freight Conference, North Atlantic United Kingdom Freight Conference.

³ Includes the following conferences which employ dual rates: River Plate and Brazil Conferences, East Coast South America Reefer Conference, Brazil-United States-Canada Freight Conference, Mid-Brazil/United States-Canada Freight Conference, North Brazil/United States-Canada Freight Conference, River Plate/United States-Canada Freight Conference.

⁴ Includes the following conferences which employ dual rates: Havana Steamship Conference, Santiago de Cuba Conference, United States Atlantic and Gulf-Haiti Conference, U.S. Atlantic and Gulf Ports-Jamaica (B.W.I.) Steamship Conference, Leeward & Windward Islands & Guianas Conference, East Coast Colombia Conference, Atlantic and Gulf/Panama Canal Zone, Colon and Panama City Conference, Atlantic & Gulf/West Coast of South American Conference, Havana Northbound Rate Agreement, West Coast South America Northbound Conference, Atlantic and Gulf/West Coast of Central America & Mexico Confer-

ence, United States Atlantic & Gulf-Venezuela & Netherlands Antilles Conference.

⁵ Includes the following conferences which employ dual rates: Gulf/French Atlantic Hamburg Range Freight Conference, Gulf Mediterranean Ports Conference, Gulf/United Kingdom Conference.

Source: Walden, "The Dual Rate Moratorium—End of the Isbrandtsen Odyssey," 10 J. of Public Law, 78, 85 (1961).

Mr. KEFAUVER. However, if a shipper does sign a dual-rate contract and subsequently breaches it, he may be subject to a heavy penalty for failure to fulfill his agreement in the form of liquidated damages equal to the actual freight rate for the cargo involved. This type of penalty, in the guise of a liquidated damage provision, has long been frowned upon by Anglo-American common law; yet is sanctioned by the bill. The effect of this liquidated-damage provision is not to recompense the carrier for damages suffered through breach—which is the standard measure of contract damages, as any lawyer knows—but to "coerce shippers to refrain from using nonconference carriers"—*Isbrandtsen Co. v. United States* (239 F. 2d 933, 940 (D.C. Cir. 1956); affirmed 356 U.S. 481 (1958)).

On the other hand, what remedy does the poor shipper have should the conference, for one reason or another, fail to provide transportation facilities for his goods? Is there any liquidated-damage provision? Any penalty? The answer in both cases is "No." Indeed, there is no obligation whatsoever on the part of conference carriers to transport the cargo of the shipper in most dual-rate contracts, so that failure to haul the shipper's goods does not even constitute a breach. Under such circumstances, it is true that, under the Senate bill, the shipper is released from his contractual obligation and may then seek transportation facilities elsewhere—that is, if he can find them. But the bill as reported would also permit dual-rate contracts to be employed to eliminate independent carriers from the trade and establish a monopoly for conference lines. Thus, the freedom of the shipper to seek outside tonnage granted in the bill is, at best, an empty gesture without some safeguards to assure the existence of other carriers in the trade, should such circumstances arise.

Why have not shippers openly opposed the dual-rate system in view of these restrictions which bind them so irrevocably to conference lines? To begin with, many large shippers have favored dual-rate agreements because they have been able to obtain favorable terms not available to other shippers. The cotton shippers association, for example, which has supported dual-rate contracts, has been

able through collective bargaining with the conferences, to obtain special concessions such as the right to cancel on 30 days' notice, and the promise on the part of the lines to provide regular sailings, as well as favorable treatment on rates. Furthermore, a lot of shipper support has been "drummed up" by the conferences and lacks genuine spontaneity, as witness the following telegram dispatched by the Transatlantic Associated Freight Conferences, a group of conferences covering the export trade of the United States from North Atlantic ports to Europe:

In mutual interest your support respectfully requested on interim legislation just introduced House and Senate to maintain status quo dual-rates systems until June 30, 1960. Urge you or your representative appear personally before House Merchant Marine and Fisheries Committee hearing June 3 through June 5, 1958, by contacting Mr. John Drewery, committee counsel, room 219, Old House Office Building, Washington, D.C. If you unable attend hearing suggest you telegraph your support interim legislation to Hon. HERBERT C. BONNER, chairman, House Merchant Marine and Fisheries Committee and to Hon. WARREN MAGNUSON, chairman, Committee on Interstate and Foreign Commerce.

This telegram was sent to more than 60 major shippers.

Some shippers have obviously opposed dual rate contracts inasmuch as they have seen fit to violate them and subject themselves to severe penalties, and in some instances, outright cancellation of their agreements. For example, Anderson & Clayton was assessed some \$145,000 for shipping cotton aboard nonconference lines from Pacific coast ports to Europe in violation of their dual rate-contract with the Pacific Coast European Conference—hearings on H.R. 12751, 85th Congress, 2d session, at page 219, 1958. This is one of the highest penalties ever levied by a conference against a shipper violating a dual-rate contract. But, what is still more surprising is that Anderson & Clayton, the shipper, is 50 percent owner of States Marine, a steamship company belonging to the Pacific Coast European Conference. Thus, despite, for all practical purposes, its controlling interest in a conference line, this company chose to breach rather than adhere to the rigid terms of the agreement. The table I ask unanimous consent to insert in the RECORD at this time reveals the names of other shippers who have become disillusioned with dual rate agreements and have been penalized by the conferences by virtue of their resort to nonconference lines.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Violations of conference merchants contracts by contract signatories, 1950 to Sept. 1, 1958

Name of conference	Name and address of violator	Approximate date	Cargo	Violation	Penalty and/or damages	Disposition
Gulf/French Atlantic Hamburg Range Freight Conference (No. 140-1).	None.					
Gulf/Mediterranean Ports Conference (No. 134).	H. Kempner, Galveston, Tex.	May 16, 1950.	Cotton.	Shipped by nonconference vessel Virginia.	\$6,010.20.	Unpaid; pending.
Gulf/United Kingdom Conference (No. 161).	None.					
Atlantic and Gulf-Singapore, Malaya and Thailand Conference (No. 8240).	None.					
Atlantic and Gulf-Indonesia Conference (No. 8080).	None.					
Far East Conference (No. 17).	United States Pipe & Foundry Co., Galveston, Tex.	February 1950.			None.	None.
	H. Kempner, Galveston, Tex.	June 1950.			\$41,886.25.	Unpaid.
	do.	October 1950.			\$26,069.03.	Do.
	do.	December 1950.			\$116,319.28.	Do.
	Schaefer-Hauser Corp.	May 1949.			\$119,955.56.	Do.
	Ball Bros.	February 1950.			\$37,275.53.	Do.
	L. A. Johnson.	January 1950.			None.	
Associated Steamship Lines (No. 5600).	United Commodities Corp.	Nov. 11, 1954.		Used nonconference vessel.		
	do.	May 27 to June 13, 1957.		do.		
	Aholtz & Co., Inc.	May 30 to June 8, 1957.		do.		
	Conrad & Co., Inc.	do.		do.		
	Corominas, Richards & Co.	do.		do.		
	Jose Yap.	do.		do.		
	Union Import & Export Co.	do.		do.		
	World-Wide Progressive Co.	do.		do.		
	United Commodities Corp.	July 4-15, 1957.		do.		
	Aholtz & Co., Inc.	July 12-24, 1957.		do.		
	Corominas, Richards & Co.	do.		do.		
	Domestic Products Export Co.	do.		do.		
	Jose Yap.	do.		do.		
	Ultramar Traders, Inc.	do.		do.		
	Union Import & Export Corp.	do.		do.		
	Copra Agencies, Inc.	July 23-29, 1958.		do.		
Pacific Coast European Conference (No. 5200).	Mutual Orange Distributors (Pure Gold, Inc.).	July 12, 1951.		do.		Paid \$5,000 in lieu of full liquidated damages.
	California Fruit Growers Exchange (Sunkist Growers).	do.		do.	\$950.	Paid \$950.
	Duthie & Co.	do.		do.	\$5,950.10.	Paid \$5,950.10.
	Sinason-Teicher Inter-American Grain Corp. and North Atlantic Seed Co., Inc.	Aug. 6, 1954.		do.	\$800.	Paid \$800.
	New England Waste Co.	Aug. 17, 1954.		do.	\$109,000.	Settlement pending.
	American Potash & Chemical Corp., Three Elephant Borax Co. and Norman Cheney.	Sept. 2, 1954.		do.		
	General Hide & Skin Corp.	Sept. 10, 1954.		do.	\$3,010.	Settled without penalty.
	Parsons & Whittemore, Inc.	Sept. 25, 1954.		do.	\$15,008.92.	Do.
	Samin Corp South American Minerals & Merchandise Corp.	Oct. 29, 1954.		do.		
	Borax Consolidated, Ltd., and Pacific Coast Borax Co.	Dec. 30, 1954.		do.		
	Stauffer Chemical Co.	do.		do.	\$8,715.56.	Settled without penalty.
	Kaufmann Trading Corp.	Dec. 31, 1954.		do.	\$3,240.	Do.
	Sterling International.	Nov. 15, 1957.		do.	\$1,087.44.	Do.
	Allied Cannors & Packers, Inc.	do.		do.	\$16,000.	Paid \$1,600.
	Anderson, Clayton & Co., Inc., S.A. of Panama, and Compania Algodonera de Mexico S.A. de C.V.	Nov. 22, 1957.		do.	\$5,000.	Paid \$425.
	Hohenberg Bros. Co. and Algodonera Hohenberg S.A. de C.V.	do.		do.	\$145,750.	Settlement pending.
	Shaw Cotton Co., Inc., and E. A. Shaw & Co., Inc.	do.		do.	\$5,500.	Do.
	do.	do.		do.	\$14,300.	Paid \$880.

Violations of conference merchants contracts by contract signatories, 1950 to Sept. 1, 1958—Continued

Name of conference	Name and address of violator	Approximate date	Cargo	Violation	Penalty and/or damages	Disposition
Pacific Coast European Conference (No. 5200)	Ziel & Co., Inc., Johns-Manville Interna- tional Corp. Schwabach & Co. Railway Supply & Manu- facturing Co., Rogers, Inc., Van Waters & Rogers, Inc., Braun Chemical Co., and Braun-Knecht-Heimann Co.	Dec. 19, 1957. Jan. 27, 1958. Oct. 24, 1958. do do		Used nonconference vessel. do do do	\$500. \$63,000. \$2,100. \$4,180. \$5,060.	Paid \$50. Settlement pending. Do. Do. Do.
Deil New York Rate Agreement (No. 7190)----- Association of West Coast Steamship Companies (No. 3802). Continental-U.S.A. Gulf Westbound Freight Conference (No. 6150). Java New York Rate Agreement (No. 90). Java Pacific Rate Agreement (No. 191). Associated Latin American Freight Confer- ences. North Atlantic Westbound Freight Association (No. 6850).	None. do do do None George Coben Sons & Co., Ltd., London, England. Cigarette Components, Ltd., London, England. Amicale Trading Co., Inc., New York.	May 1953. November 1953. March 1958.				Readmitted as signatories Nov. 4, 1953. Noncontract rates applied. No further action taken.
Pacific Coast River Plate Brazil Conference (No. 6400). Pacific West Coast of South America Confer- ence (No. 4630).	None. Raymond Concrete Pile Co. Santa Fe Drilling Co. Utah Construction Co. Globe Distributors Co. J. R. Townsend. Atlas Powder Co. Pillsbury Mills, Inc.	Mar. 6, 1953. Nov. 17, 1953. December 1957 (2). February 1958 (2). June 13, 1958. June 1958. Aug. 12, 1958. Sept. 6, 1958.	1 box machinery parts. Oil drilling equipment. Machinery explosives. 6 buses. Machinery. 3,750 tons bran, 4,450 tons flour. Lumber.	Used nonconference vessel <i>Irish Rose</i> . Used nonconference vessel <i>Flying Eagle</i> . Used nonconference vessel <i>Annita L.</i> , <i>Primar Edward Fritzen</i> , <i>Batis</i> , and <i>Andros Mentor</i> . Used nonconference vessel <i>Andros Mentor</i> . Used nonconference vessel <i>Cullao</i> . Used nonconference vessel <i>Andros Legend</i> . Used nonconference vessel <i>Crickett</i> .	Unknown. \$39,900. \$217,188.86. \$15,242.48. \$147.56 approximately. \$6,375. \$213,450.	Dropped. Paid \$3,600. Contract suspended May 14, 1958. Signatory canceled contract June 30, 1958. Contract suspended Sept. 1, 1958. Pending. Contract suspended Oct. 13, 1958. Contract suspended Oct. 13, 1958. Signatory canceled contract Nov. 25, 1958. Paid \$100.
Pacific Coast/Panama Canal Freight Conference (No. 7170). West Coast South America/North Pacific Coast Conference (No. 6270). Pacific Coast/Mexico Freight Conference (No. 7570). Capca Freight Conference (No. 6170)	None. do Dullen Steel Products, Inc. Exchange Orange Products. Petrex Corp. Peerless Pump Division, Food Machinery and Chemical Corp. San Francisco Chemical Co. Alhert D. Denis & Co., Inc.	January 1958. Mar. 5, 1958. Mar. 6, 1958. Apr. 1, 1958. April 1958. May 22, 1953.	3,000 tons steel rails. 36 cartons fruit concentrate. 100 bags paraffin wax. 12 packages pumps and parts. 100 tons phosphate rock. 2 boilers.	Used nonconference vessel <i>Romulus</i> . Used nonconference vessel <i>Irish Rose</i> . do do Used nonconference vessel <i>Irish Willow</i> . do	\$61,500. Unknown. do do \$1,650. \$3,000 approximately.	Contract suspended May 13, 1958. Settled for \$1. Dropped. Do. Contract suspended May 12, 1953. Contract suspended July 6, 1953; signatory canceled July 11, 1953. Dropped.
Canal, Central America Northbound Confer- ence (No. 6070). Pacific Coast/Caribbean Sea Ports Conference (No. 4294).	Minnesota Mining & Man- ufacturing Co. Pacific Vegetable Oil Corp. Elof Hansson, Inc. Farmer's Rice Growers Co- operative. Stokely Van Camp, Inc. Bonner Packing Co. American Metal Climax, Inc. Star Kist Foods, Inc. Bukley Duntun Paper Co. S. A. Hock Huay Hin	May 27, 1953. Feb. 16, 1953. June 19, 1950. Jan. 21, 1957. do Jan. 21, 1958. February 1957. do do Apr. 29, 1952.	53 packages abrasives. 202 tons sesame seed. Paper and woodpulp. 1,941 bags of rice. 10,880 cases of canned goods. 200 cases dried fruit. Pumps and paint. 5,750 cases sardines. 350 cartons paper.	Used nonconference vessel <i>Pition</i> . Used nonconference vessel <i>Irish Rose</i> . Used nonconference vessel <i>Hoperidge</i> . Used nonconference vessel <i>Yapeyu</i> . do do do do do Used nonconference vessel <i>Flying Spray</i> . Used nonconference vessel <i>Sir John Franklin</i> .	Unknown. \$3,546.55. \$23,841. \$3,031.13. \$9,313.04. \$359.38. \$17.71. \$10,697.20. \$631.40. None. do.	Settled for \$350. Settled for \$5,500. Settled for \$150. Settled for \$400. Settled for \$14.31. Settled for \$1.77. Settled for \$500. Settled for \$63.14.
Camexco Freight Conference (No. 6670). Straits/New York Conference (No. 6010)	None. Hock Huay Hin Ek Liang Hin	May 26, 1957.				

Trans-Pacific Freight Conference (Hong Kong) ³ (No. 14-1).	Teck Bin Trading Co.	Apr. 26, 1958		Used nonconference vessel <i>Brooklyn Heights</i> .	Used nonconference vessel <i>Brooklyn Heights</i> .	do.	
	do.	May 9, 1958		Used nonconference vessel <i>Flying Gull</i> .	Used nonconference vessel <i>Flying Gull</i> .	do.	
	do.	May 31, 1958		Used nonconference vessel <i>Flying Enterprise II</i> .	Used nonconference vessel <i>Flying Enterprise II</i> .	do.	
	do.	June 6, 1958		Used nonconference vessel <i>Flying Independent</i> .	Used nonconference vessel <i>Flying Independent</i> .	do.	
	do.	June 15, 1958		Used nonconference vessel <i>Flying Trader</i> .	Used nonconference vessel <i>Flying Trader</i> .	do.	
	do.	July 15, 1958		Used nonconference vessel <i>Flying Cloud</i> .	Used nonconference vessel <i>Flying Cloud</i> .	do.	
	Kwong Tai Cheung	June 1953		Used nonconference vessel <i>Brooklyn Heights and Remsen Heights</i> .	Used nonconference vessel <i>Brooklyn Heights and Remsen Heights</i> .	do.	Shipper promised no repetition.
	Chung Shing Shun, Ltd.	July 2, 1953		Used nonconference vessel.	Used nonconference vessel.	HK\$163.97.	Paid HK\$163.97.
	Dah Chung Industrial Co. (1947), Ltd.	Sept. 28, 1953		Used nonconference vessel <i>Flying Clipper</i> .	Used nonconference vessel <i>Flying Clipper</i> .	None.	Shipper strongly cautioned.
	Chinese Produce Shippers' Gordon, Woodroffe Co. (Far East) Ltd.	May 24, 1955		Used nonconference vessel.	Used nonconference vessel.	do.	None.
New York Freight Bureau (Hong Kong) ⁴ (No. 5700).	United Electric Manufacturing Factory.	June 15, 1955		Used nonconference vessel.	Used nonconference vessel.	do.	Warned.
	Wal Hing Kong.	Mar. 16, 1954		Used nonconference vessel <i>Flying Eagle</i> .	Used nonconference vessel <i>Flying Eagle</i> .	do.	Shipper promised no repetition.
	The Ling Nam Hardware Manufacturing Co., Ltd.	January 1956		Used nonconference vessel <i>Sir John Franklin and Flying Enterprise</i> .	Used nonconference vessel <i>Sir John Franklin and Flying Enterprise</i> .	do.	None.
	Kwong Hing Hong.	Nov. 9, 1953		Used nonconference vessel <i>Remsen Heights</i> .	Used nonconference vessel <i>Remsen Heights</i> .	do.	Voluntarily paid difference of HK\$44.40, accepted.
	Honour Metal Manufacturing Co.	Mar. 14, 1954		Used nonconference vessel <i>Flying Clipper</i> .	Used nonconference vessel <i>Flying Clipper</i> .	do.	None.
	United Electric Manufacturing Factory.	do.		Used nonconference vessel <i>Flying Eagle</i> .	Used nonconference vessel <i>Flying Eagle</i> .	do.	Cautioned.
	Sammy Y. Lee & Wangs Co., Ltd.	Mar. 31, 1954		Used nonconference vessel <i>Flying Independent</i> .	Used nonconference vessel <i>Flying Independent</i> .	do.	None.
	Sun & Son Co.	Apr. 22, 1954		Used nonconference vessel <i>Flying Arrow</i> .	Used nonconference vessel <i>Flying Arrow</i> .	do.	Do.
	Amoy Canning Corp. (Hong Kong), Ltd.	Apr. 17, 1954		Used nonconference vessel <i>Remsen Heights</i> .	Used nonconference vessel <i>Remsen Heights</i> .	do.	Shipper guaranteed no repetition.
	Chinese Commodity Shippers.	May 28, 1954		Used nonconference vessel <i>Flying Cloud</i> .	Used nonconference vessel <i>Flying Cloud</i> .	do.	None.
Continental-U.S.A. Gulf Westbound Freight Conference (No. 6150).	Kui Fat Yuen, Ltd.	Oct. 5, 1954		Used nonconference vessel <i>Sir John Franklin</i> .	Used nonconference vessel <i>Sir John Franklin</i> .	do.	Cautioned.
	Baldwin, Payne & Co.	Oct. 28, 1954		Used nonconference vessel <i>Flying Trader</i> .	Used nonconference vessel <i>Flying Trader</i> .	do.	Dropped.
	None.			Used nonconference vessel <i>Maria C.</i>	Used nonconference vessel <i>Maria C.</i>		No action on account of justification by shipper.
	S.A.I.M.A., Genoa.	July 1, 1950		do.	do.		Denied contract rate benefits as of Feb. 20, 1951.
	S.T.A.T., Genoa.	Jan. 7, 1951		do.	do.		Readmitted as of Mar. 6, 1951.
	Mario Brambilla, Genoa.	do.		Used nonconference vessel.	Used nonconference vessel.		No action on account of justification.
	Perasso & C., Genoa.	Feb. 3, 1951		Used nonconference vessel <i>Maersk</i> .	Used nonconference vessel <i>Maersk</i> .		Do.
	Satema, Genoa.	do.		do.	do.		Do.
	Luigi Rossi, Genoa.	Feb. 20, 1951		Used nonconference vessel <i>Enrico C.</i>	Used nonconference vessel <i>Enrico C.</i>		Do.
	S.I.T.I.A.M., Genoa.	Mar. 5, 1951		Used nonconference vessel <i>Helten</i> .	Used nonconference vessel <i>Helten</i> .		Do.
The West Coast of Italy, Sicilian, and Adriatic Ports North Atlantic Range Conference (No. 2346).	Gaslini S.A., Genoa.	Mar. 13, 1951		Used nonconference vessel <i>Maria C.</i>	Used nonconference vessel <i>Maria C.</i>		Do.
	Gbigliotti A.M. & L., Genoa.	Apr. 9, 1951		Used nonconference vessel <i>Dorothy Stevenson</i> .	Used nonconference vessel <i>Dorothy Stevenson</i> .		Do.
	David Christoforo, Genoa.	Apr. 5, 1951		Used nonconference vessel <i>Cornelius Maersk</i> .	Used nonconference vessel <i>Cornelius Maersk</i> .		Do.
	Emilio Oliva, Genoa.	Apr. 9, 1951		Used nonconference vessel <i>Dorothy Stevenson</i> .	Used nonconference vessel <i>Dorothy Stevenson</i> .		Do.
	Stimar, Genoa.	Apr. 13, 1951		Used nonconference vessel <i>Paolina</i> .	Used nonconference vessel <i>Paolina</i> .		Do.
	Socotra, Genoa.	May 6, 1951		Used nonconference vessel <i>T. J. Stevenson</i> .	Used nonconference vessel <i>T. J. Stevenson</i> .		Do.
	Pulafito & C., Genoa.	Aug. 20, 1951		Used nonconference vessel <i>Maria C.</i>	Used nonconference vessel <i>Maria C.</i>		Readmitted as of Oct. 23, 1951.
	Gritti & De Foresta, Genoa.	July 31, 1951		Used nonconference vessel <i>Paolina</i> .	Used nonconference vessel <i>Paolina</i> .		No action on account of justification.
	Francesco Pelizza, Genoa.	Sept. 22, 1951		Used nonconference vessel <i>T. J. Stevenson</i> .	Used nonconference vessel <i>T. J. Stevenson</i> .		Do.
	San Christoforo, Genoa.	Oct. 2, 1951		Used nonconference vessel <i>Paolina</i> .	Used nonconference vessel <i>Paolina</i> .		Do.
See footnotes at end of table, p. 18182.	Giovanni Fedevilla, Genoa.	Mar. 20, 1952		Used nonconference vessel <i>T. J. Stevenson</i> .	Used nonconference vessel <i>T. J. Stevenson</i> .		Do.
	Stefano Calderoni, Genoa.	Sept. 20, 1952		Used nonconference vessel <i>Dorothy Stevenson</i> .	Used nonconference vessel <i>Dorothy Stevenson</i> .		Do.

Violations of conference merchants contracts by contract signatories, 1950 to Sept. 1, 1953—Continued

Name of conference	Name and address of violator	Approximate date	Cargo	Violation	Penalty and/or damages	Disposition
The West Coast of Italy, Sicilian, and Adriatic Ports North Atlantic Range Conference (No. 2846).	Giovanni Gandiglio, Genoa.	Jan. 4, 1951.	2,500 tons slates.	Used nonconference vessel <i>Maersk</i> .		No action on account of jurisdiction.
	do.	June 17, 1958.	8 tons slates.	Used nonconference vessel <i>Kohka</i> .		Warned about future violations.
	Succ. Pietro Del'Acqua, Genoa.	Jan. 4, 1951.	53 tons sodium cyanide in drums.	Used nonconference vessel <i>Arnold</i> .		No action on account of justification.
	O.T.I.M., Genoa.	Jan. 4, 1951.	1,338 tons spare parts.	Used nonconference vessel <i>Arnold</i> .		No action on account of justification.
	Mario Salvetti, Genoa.	Jan. 7, 1951.	25 tons magnesium scraps.	Used nonconference vessel <i>Maria C.</i>		Do.
	do.		Several undetailed shipments.	Used nonconference vessel.	Denied contract rate benefits Aug. 7, 1953.	Readmitted as of Oct. 18, 1953.
	Cismar, Genoa.	June 17, 1953.	800 bags cocoa and 1 automobile.	Used nonconference vessel <i>Kohka</i> .		Continued on docket.
	Heritrans, Genoa.	Aug. 6, 1953.	1,200 bags cocoa.	Used nonconference vessel <i>Kochu</i> .		Warned about future violations.
	Celso Repetto, Genoa.	Nov. 30, 1953.	9,777 tons silk waste.	Used nonconference vessel <i>Leise</i> .		No action on account of justification.
	Mario Tasso, Genoa.	Apr. 30, 1954.	Small undetailed parcels.	Used nonconference vessel <i>Maersk</i> .		On account of pending admission of Maersk Line no action taken.
South Atlantic Steamship Conference (No. 8310).	Textile Transport, Genoa.	Apr. 30, 1954.	Small undetailed parcels.	Used nonconference vessel <i>Maersk</i> .		No action on account of justification.
	Masini G., Genoa.	Oct. 1, 1957.	94 tons tractors, crawler type, tracks.	Used nonconference vessel <i>Leza</i> .		No action on account of justification.
	Angelo Rosaco, Genoa.	May 9, 1958.	1,735 kos. machinery.	Used nonconference vessel <i>Leise</i> .		On account of pending admission of Maersk Line no action taken.
	Francesco Parisi, Genoa.	June 17, 1953.	45 tons Paradise see ls, 2 automobiles.	Used nonconference vessel <i>Hrnalska</i> .		Warned about future violations.
	Oliver D., Genoa.	Aug. 6, 1958.	33 tons old bagging.	Used nonconference vessel <i>Kochu</i> .		Do.
	Attilio fu A. Galletto, Genoa.	do.	25 tons cotton waste.	Used nonconference vessel <i>Kohka</i> .	Decisions regarding shipper pending July 1, 1958.	Warned Oct. 2, 1958; no action taken re past violations.
	Pietro Montanelli, Leghorn.	Aug. 31, 1953.	240 tons marble chips.	Used nonconference vessel <i>Kochu</i> .	Denied contract rate benefits as of Sept. 23, 1953.	Denied contract rate benefits as of Sept. 23, 1953.
	Fischer & Rechsteiner, Genoa.	Oct. 6, 1953.	6 tons lamp glass.	Used nonconference vessel <i>Kochu</i> .	Denied contract rate benefits as of Sept. 23, 1953.	Readmitted as Galletto Attilio & C. from Mar. 11, 1953.
	Francesco Borzone, Genoa.	Aug. 6, 1958.	15 tons iron screws.	Used nonconference vessel <i>Kochu</i> .		Denied contract rate benefits as of Sept. 23, 1953.
	do.	Oct. 6, 1958.	7 tons iron screws.	Used nonconference vessel <i>Kochu</i> .		Warned about future violations.
U.S. Atlantic and Gulf/Australia-New Zealand Conference (No. 6200).	Levero & Kunz, Genoa.	Aug. 6, 1958.	5,700 kos. goat skins.	Used nonconference vessel <i>Kochu</i> .	Denied contract rate benefits as of Dec. 9, 1958.	Readmitted as of Dec. 9, 1958.
	Gotelli & C.S.P.A., Genoa.	do.	30 tons jute rags.	Used nonconference vessel <i>Kochu</i> .		Warned about future violations.
	Pierucci & Riccioni, Leghorn.	Aug. 31, 1958.	75 tons motor vehicle tires.	Used nonconference vessel <i>Korai Maru</i> .		Do.
	Renato Riccio, Naples.	Oct. 23, 1958.	28 tons macaroni, spaghetti, vermicelli.	Used nonconference vessel <i>Capt. M.</i>		Do.
	Finberg Trading Co., Dallas, Tex.	June 26, 1950.	1,731 bales of cotton.	Used nonconference vessel <i>Governor</i> .	\$12,117.	Did not pay; contract canceled Sept. 13, 1950.
	Railway Supply & Manufacturing Co.	June 1954.	396 bales cotton waste.	Used nonconference vessel <i>Merwede</i> .		Contract canceled Sept. 4, 1954.
	None.					
	do.					
	Pressed Steel Car Co.	Sept. 30, 1953.		Used nonconference vessel.	None.	None.
	Pan American Freight Development Corp.	June-July 1954.		do.	do.	Do.
Straits/Pacific Conference (No. 7090).	Hummel Chemical Co., Inc.	do.		do.	do.	Do.
	International Commodity Corp.	do.		do.	do.	Do.
	Leval & Co., Inc.	May 1956.		do.	do.	Do.
	Davidson Chemical Co.	1958.		do.	do.	Do.
	Industrial Trading, Ltd.	Mar. 13, 1952.		Used nonconference vessel <i>Sir John Franklin</i> .	do.	Do.
	None.					
	do.					
	do.					
	do.					
	do.					
The India, Pakistan, Ceylon, and Burma Outward Freight Conference (No. 7690).	Pacific/Indonesian Conference (No. 6060).					
	Pacific/Indonesian Conference (No. 6060).					
	Pacific/Indonesian Conference (No. 6060).					

Pacific Coast-Australasian Tariff Bureau (No. 50-1). Gulf and South Atlantic Havana Steamship Conference (No. 4188). Pacific Westbound Conference (No. 57).	The West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (No. 2846).
do. (9) Marsman Co. of California. Sept. 1, 1953. Used non-conference vessel <i>Muncaster Castle</i>. ? Paid \$300. Leval & Co., Inc.⁷ Robin Hood Flour Mill, Inc. I.N.D.A., Genoa. October 1957. Feb. 3, 1951. Used non-conference vessel <i>Cyclope</i>. Used non-conference vessel <i>Panagiotis D Maersk</i>. 500 tons aluminum ware. ? No action on account of justification by shipper.	Mario Molinari, Genoa. Feb. 20, 1951. Used non-conference vessel <i>Enrico C.</i> Denied benefits of contract rates Mar. 30, 1951. Ocehuto G. & C.S.p.A., Genoa. July 1, 1950. Used non-conference vessel <i>Moria C.</i> Do. Readmitted Oct. 29, 1952.
Carrara, Marson, Seccenti, Genoa. May 4, 1950. Used non-conference vessel <i>Luisa C.</i> Do. No action on account of justification by shipper. Otto & Rosoni S.r.l., Genoa. June 6, 1950. Used non-conference vessel <i>Furico C.</i> Used non-conference vessel <i>Maria C.</i> 11,500 tons coffee. 23 tons wool. 8.8 tons wool. Deferred to next rate committee meeting. Matter dropped.	Lines agreed no action to be taken. Readmitted Oct. 1, 1958 on account of justification. No action on account of justification by shipper.
Gastaldi & Co., Genoa. May 15, 1950. Used non-conference vessel <i>Furico C.</i> Do. Continued on docket for explanation. Globe Transport, Genoa. Sept. 26, 1950. Used non-conference vessel <i>Fugenio C.</i> Denied benefits of contract rates Sept. 23, 1958.	Lines agreed no action to be taken. Readmitted Oct. 1, 1958 on account of justification. No action on account of justification by shipper.
Luigi Serra, Genoa. June 6, 1950. Used non-conference vessel <i>Luisa C.</i> Do. Continued on docket for explanation. Pelli Cuof Ed Affini, Milan. July 22, 1950. Used non-conference vessel <i>Furico C.</i> Used non-conference vessel <i>Fugenio C.</i> Used non-conference vessel <i>Dorothy Stenerson</i>. Used non-conference vessel <i>Lauck</i>. 11,027 kos. "iron pipes," 700 kos. "rubber pipes," and 69 kos. "faucets," and 3,250 kos. machinery. 10 tons machinery. 18 tons dried rabbitskins. 18,800 tons mercury. 100 tons lentils. 1,425 cases preserves. 3,653 kos. coffee percolators. 50 tons rags. 3,665 tons feathers. 30,000 kos. jute bags. 101,360 kos. litopone; 30,000 kos. jute bags. 101,360 kos. litopone. "Several parcels" do. 2,190 tons textiles, silk and cotton. Yarns. Rags. 176 kos. bats. 5,092 tons nougat-torrone. 5,279 kos. empty flasks. 154 tons magnesium scraps. 45 tons sulfured cherries. 151,600 tons cellulose. 45 tons sulfured cherries. 14 tons bulk aluminum and 37,300 tons magnesium. 5,637 tons machinery.	Used non-conference vessel <i>Hellen Stenerson</i>. Denied benefits of contract rates Sept. 6, 1950. Denied benefits of contract rates Nov. 10, 1955. Used non-conference vessel <i>Enrico C.</i> Do. No action taken on account of justification.
Marengo & C., Genoa. Sept. 26, 1950. Used non-conference vessel <i>Enrico C.</i> Do. No action taken on account of justification. Giuseppe Buscaglia, Genoa. Aug. 3, 1950. Used non-conference vessel <i>Arnold Maersk</i>. Used non-conference vessel <i>Hellen Stenerson</i>. Used non-conference vessel <i>Enrico C.</i> Used non-conference vessel <i>T. J. Stenerson</i>. Used non-conference vessel <i>Dorothy Stenerson</i>. Used non-conference vessel <i>Moria C.</i>	Denied benefits of contract rates as of Nov. 15, 1950. Denied benefits of contract rates Nov. 15, 1950. Readmitted as of Jan. 19, 1951. No action on account of justification.
Giordano Oreste, Genoa. Oct. 11, 1950. Used non-conference vessel <i>Eugenio C.</i> Used non-conference vessel <i>Maria C.</i> Used non-conference vessel <i>Enrico C.</i> Used non-conference vessel <i>Hellen Stenerson</i>. Used non-conference vessel <i>Christian Maersk</i>. Used non-conference vessel <i>Eugenio C.</i> Used non-conference vessel <i>Maria C.</i> Used non-conference vessel <i>Eugenio C.</i> Used non-conference vessel <i>Maria C.</i> Used non-conference vessel <i>Paolina</i>.	Denied benefits of contract rates as of Nov. 15, 1950. Denied benefits of contract rates Nov. 15, 1950. Readmitted as of Jan. 8, 1951. No action taken on account of justification by shipper.

See footnotes at end of table, p. 18182.

Violations of conference merchants contracts by contract signatories, 1950 to Sept. 1, 1953—Continued

Name of conference	Name and address of violator	Approximate date	Cargo	Violation	Penalty and/or damages	Disposition
The West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (No. 2846).	Puliti & Vassallo, Genoa.....	Aug. 6, 1951.....	49,950 tons iron nails.....	Used nonconference vessel <i>Henry Stevenson</i> .	-----	No action on account of justification.
	Benigno Repetto, Genoa.....	Sept. 22, 1951.....	50 tons iron nails.....	Used nonconference-vessel <i>T. J. Stevenson</i> .	-----	Denied contract rates benefits Oct. 9 1951.
		Dec. 6, 1950.....	1,018 tons washed wool.....	Used nonconference-vessel <i>Enrico C.</i>	-----	No action on account of justification.

¹ Includes the following conferences:

- (1) Atlantic & Gulf/Panama Canal Zone, Colon, and Panama City Conference (No. 3868).
- (2) Atlantic & Gulf/West Coast of Central America and Mexico Conference (No. 3300).
- (3) Atlantic & Gulf/West Coast of South America Conference (No. 2744).
- (4) East Coast Colombia Conference (No. 7590).
- (5) Havana Steamship Conference (No. 4189).
- (6) Leeward & Windward Islands and Guianas Conference (No. 7540).
- (7) Santiago de Cuba Conference (No. 7650).
- (8) U.S. Atlantic & Gulf-Bermuda Freight Conference (No. 7900). (Does not employ dual rate contract.)
- (9) U.S. Atlantic & Gulf-Haiti Conference (No. 8120).
- (10) U.S. Atlantic & Gulf-Venezuela and Netherlands Antilles Conference (No. 6870).

Source: Celler committee hearings, pt. 1, vol. 1, facing p. 742.

(11) U.S. Atlantic & Gulf Ports-Jamaica (B.W.I.) S.S. Conference (No. 4610).

(12) West Coast South America Northbound Conference (No. 7890).

² Covers period 1950-57. No Merchants' Freight Agreement in effect as of Oct. 15, 1953.

³ No active investigation conducted on suspected violations since summer of 1956.

⁴ No active investigation conducted on suspected violations since 1955.

⁵ Suit filed to recover damages but denied by courts. See *River Plate & Brazil Conferences v. Pressed Steel Car*

Co., 227 F. 2d 60, aff'g 124 F. Supp. 88 S.D.N.Y. 1955.

⁶ Conference replied ".... it is virtually impossible to comply with your request due to fact that, first, we do

not have the staff to compile such information

⁷ Violation subject of suit in circuit court of Multnomah County, Oreg. Decided adversely to conference

July 16, 1951, and subsequently affirmed by Supreme Court of Oregon.

Mr. KEFAUVER. I honestly believe many shippers are opposed to dual-rate agreements but are fearful of voicing their protests, first, because of the power possessed by the conferences over all of our foreign trade routes, and second, because a number of big companies, who are able to get their own terms, supported the conferences because they have nothing to lose thereby. But, a number of shippers have pointed with concern to the defects in the system, and I ask unanimous consent to place in the RECORD, a summary of these defects, with the comment that these formed an important part of the background for the safeguards ultimately written into the Bonner bill.

The summary was printed by the Steamship Conference Reporter, March 2, 1961, and the references are to pages in the Bonner hearings.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

CRITICISMS RE CONTRACT RATE SYSTEM

(a) Contracts are not uniform (Thorpe, p. 449; Maynard, pp. 483, 485-486; Staley, pp. 561-562; Meredith, (accompanied by Glass), pp. 818-819; Deane, p. 831; Sinclair, p. 1345; Stetson, p. 1394; Bransten, pp. 1424, 1432-1433; Connolly, p. 1473; Gavigan, p. 1540; Falk, pp. 1548-1550).

(b) Contracts are unilateral, give shippers few rights (do not guarantee space, etc.) (O'Connor, pp. 582-583; Spedden, p. 924; Eikel, pp. 1018-1019; Stetson, p. 1395; Bransten, pp. 1413, 1462; Falk, pp. 1548-1550).

(c) Contracts' liquidated damage provisions are unfair (O'Connor, pp. 582-583; Sinclair, p. 1344; Stetson, p. 1395; Gavigan, p. 1540).

(d) Spread or differential between contract and noncontract rates is too great; noncontract rate is unrealistic and a penalty rate (Crinkley, p. 214; O'Connor, pp. 583-584; Stetson, pp. 1395-1396; Connolly, p. 1474; Gavigan, p. 1540).

(e) Contracts unfairly cover 100 percent of contract signer's shipments (French, pp. 1000-1001; Burke, p. 1097; Hinrichs, p. 1187; Bordelon, p. 1202).

(f) Contracts unfairly cover signer's affiliates and subsidiaries (Shields, p. 502; O'Connor, p. 595; Arnold, pp. 1111-1112; Sinclair, p. 1343; Morin, p. 1534).

(g) Contracts unfairly cover practically all of a shipper's cargo including bulk-type cargoes, shipments contract signer moves in vessels it owns or charters, and full-shipload cargoes (Shields, pp. 502, 504-507; O'Connor, p. 595; Finley, pp. 803-805; Arnold, p. 1112; Sinclair, p. 1344).

(h) Contracts unfairly cover cargoes not being carried by nonconference competitors (Classen, p. 494).

(i) Contracts unfairly being construed to cover f.o.b./f.a.s. sales of contract signers (Maynard, pp. 483-486; Coron, p. 523; O'Connor, pp. 639-640; Kneessy, pp. 705, 709, 712-714; Helst, pp. 721-724; Gravely, pp. 794-795; Meredith, pp. 813-814, 818; Deane, pp. 827-829; Ryon, pp. 833-834; Gould, pp. 891-893; Spedden, p. 916; Creekmore, pp. 980, 983; Eikel, p. 1015; Neuert, pp. 1056-1057; Arnold, pp. 1111-1112; Houston, p. 1137; Knight, pp. 1139-1142, 1151-1152; Tolpo, p. 1164; Sinclair, pp. 1342-1343; Tolan, pp. 1489-1525; Quinn, pp. 1524-1525; Morin, p. 1531, 1534;

Gavigan, p. 1541; Falk, pp. 1548-1550; Gray, p. 1025; Lewis, p. 1082).

(j) Contracts unfairly being construed not to cover f.o.b./f.a.s. sales of contract signer (Stetson, pp. 1394-1395; Labagh, p. 1406; Robb, pp. 1481-1482).

(k) Contracts unfairly run indefinitely or are renewed automatically and are difficult for shipper to cancel (Sinclair, p. 1344; Stetson, p. 1395).

(l) Conferences fail to notify contract shipper of proposed changes in the existing contract at least 4 months before effective date of such changes (Radcliffe, p. 475).

(m) Contracts not needed; e.g., other conferences get along without them (Crinkley, pp. 223-224; O'Connor, pp. 589-590; Ryon, p. 834; Bransten, pp. 1421-1422).

(n) Contracts will or might seriously damage or destroy nonconference lines (Crinkley, pp. 198, 208; Triggs, p. 567; O'Connor, pp. 580-581, 632-634, 643-644; Kneessy, p. 706; Peabody, p. 785; Gravely, p. 794; Meredith, pp. 816-817; Williams, pp. 969, 974-975; Wolfe, p. 1082; Lewis, p. 1082; Knight, pp. 1140-1141, 1150; Tolpo, p. 1163; Muzzy, p. 1528).

(o) Contracts' benefits unfairly extended to "associate member" lines (O'Connor, p. 589).

(p) Law authorizing contracts would be unconstitutional (O'Connor, pp. 644-645).

(q) Contracts cause rates to be too high (Kneessy, pp. 705-706; Gravely, p. 794; Bransten, pp. 1413-1417; Gavigan, p. 1540).

(r) Contracts unfairly cover certain ports not served (Sinclair, pp. 1343-1344; Stetson, p. 1395).

(s) Contract rates do not stabilize trade, can be increased on less than 90 days' notice (Stetson, p. 1395; Bransten, pp. 1413, 1417-1418; Morin, p. 1531; Gavigan, p. 1540).

(t) Contracts keep lines from entering trade (Bransten, p. 1470).

Conferences to which American Export Lines belongs, which operate under a deferred rebate system

Conference	Deferred rebate system	Formation	Joined
South French Ports/Levant Conference (from Marseilles and other south French ports to Egypt, Lebanon, Greece, Turkey, Syria, Malta, and Cyprus).	Yes.....	Apr. 1, 1951....	Apr. 1, 1951.
Egypt/Italy Freight Conference.....	Yes.....	March 1947....	March 1947.
Alexandria/Marseilles Freight Conference.....	Yes.....	Apr. 1, 1949....	Apr. 1, 1949.
Egypt-India-Pakistan Cotton Conference.....	Yes.....	June 24, 1946....	Aug. 22, 1946.
Calcutta/Port Said, Eastern Mediterranean and North African Freight Rate Agreement (Calcutta/Nafra).	Yes.....	Jan. 1, 1951....	Jan. 1, 1951.
Calcutta/Aden and Red Sea Freight Rate Agreement (Calcutta/Aredra).	Yes.....	Apr. 1, 1958....	Apr. 1, 1958.
Chittagong and Pussur River/Port Said, Eastern Mediterranean and North African Freight Rate Agreement (East Pakistan/Nafra).	Yes.....	Dec. 1, 1953....	Dec. 28, 1953.
Karmahom Conference (from Karachi, Bombay, Mormugao, Bedi Bunder, Bhavnagar, Cutch Mandui, Kundla, Navalakhi, Porbandar, Port Okha, and Verawal to Gibraltar, ports in United States and Eire, Greece, Yugoslavia, Italy, France, Spain, Portugal, Belgium, Holland, Germany, Denmark, Norway, Sweden, and Finland).	Yes.....		Jan. 13, 1949.

Celler committee hearings, pt. 1, vol. V, p. 5097.

Mr. KEFAUVER. The second argument, namely, that rate wars will ensue if there is no dual-rate agreement, is equally faulty. In the first place, there are a large number of conferences which do not have dual-rate systems, and there has been no showing that these conferences have been any more prone to suffer from rate wars than the conferences that have promulgated such agreements.

Mr. KEFAUVER. Now, why is it today proposed to permit these harsh, stringent contracts to bind every American shipper from coast to coast to the foreign-dominated steamship cartels which have a past record of abuses and disregard of American law second to none? It would seem more reasonable that the committee would report a bill designed to place effective controls on the future actions of conferences, rather than to confer even more power upon them. The Senate report is rather brief in answering this important question. It argues, first, that the conferences need a dual-rate system; second, that it is enforced on all the other trade routes of the world except the United States; and, third, that without them, there will be rate wars.

While one or more of these reasons have been advanced over the years in support of dual-rate agreements, their validity has never been satisfactorily demonstrated. In fact, their falsity can be readily shown.

First, the fact that dual-rate contracts exist in other foreign trade routes is absolutely no argument for legalizing them in the foreign trade of the United States. One might just as well argue that the provisions in the Shipping Act against fighting ships, or deferred rebates, should be repealed because these practices also are permitted, as can be seen from the table which I now ask unanimous consent to have printed in the RECORD, in wholly foreign trades.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

I ask unanimous consent to insert a list of the 47 conferences which did not have dual-rate agreements as of November 28, 1959. I might add further that in the RECORD there is no indication that these conferences have not prospered to the same extent as conferences with dual rates.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

APPENDIX B.—Number of regular member and nonmember operators in each of the 47 non-dual-rate conferences as of Nov. 28, 1958

Conference number	Member and nonmember operators			Member operators			Nonmember operators			Conference number	Member and nonmember operators			Member operators			Nonmember operators		
	American	Foreign	Total	American	Foreign	Total	American	Foreign	Total		American	Foreign	Total	American	Foreign	Total	American	Foreign	Total
93-----	0	11	11	0	10	10	0	1	1	7860----	3	13	16	3	11	14	0	2	2
116-----	1	11	12	1	11	12	(1)	(1)	(1)	7880----	4	11	15	2	5	7	2	6	8
138-----	5	8	13	0	2	2	5	6	11	7900----	1	4	5	0	2	2	1	2	3
150-----	8	18	26	7	18	25	1	0	1	8040----	5	9	14	4	9	13	1	0	1
194-----	5	11	16	5	11	16	0	0	0	8050----	3	13	16	3	13	16	0	0	0
3103-----	5	14	19	4	14	18	1	0	1	8090----	2	1	3	2	1	3	0	0	0
3357-----	0	4	4	0	4	4	0	0	0	8100----	4	14	18	4	14	18	0	0	0
3578-----	1	8	9	1	5	6	0	3	3	8130----	0	8	8	0	3	3	0	5	5
3579-----	2	7	9	1	6	7	1	1	2	8140----	0	7	7	0	4	4	0	3	3
5300-----	1	3	4	0	3	3	1	0	1	8160----	1	6	7	1	3	3	0	3	3
5400-----	1	3	4	1	3	4	0	0	0	8180----	0	4	4	0	3	3	0	1	1
5660-----	2	9	11	2	8	10	0	1	1	8190----	5	14	19	4	14	18	1	0	1
6080-----	3	7	10	3	3	6	0	4	4	8210----	2	12	14	2	7	9	0	5	5
6310-----	5	0	5	5	0	5	0	0	0	8220----	1	1	2	1	1	2	0	0	0
7200-----	2	9	11	2	9	11	0	0	0	8230----	3	12	15	2	12	14	1	0	1
7530-----	4	8	12	2	6	8	2	2	4	8250----	0	4	4	0	4	4	0	0	0
7560-----	1	7	8	0	3	3	1	4	5	8260----	0	4	4	0	4	4	0	0	0
7580-----	1	7	8	1	5	6	0	2	2	8290----	3	0	3	3	0	3	0	0	0
7680-----	5	8	13	3	6	9	2	2	4	8320----	0	3	3	0	2	2	0	1	1
7700-----	2	6	8	2	4	6	0	2	2	8350----	2	5	7	1	1	2	1	4	5
7780-----	1	3	4	1	1	2	0	2	2	8390----	3	9	12	3	9	12	0	0	0
7810-----	1	4	5	1	2	3	0	2	2	8410----	1	2	3	1	2	3	0	0	0
7820-----	0	11	11	0	9	9	0	2	2	8420----	1	1	2	1	1	2	0	0	0
7830-----	0	9	9	0	8	8	0	1	1										

¹ No report.

Source: Federal Maritime Board. [Berman committee hearings, pt. 1, at p. 169.]

Mr. KEFAUVER. I think it should be pointed out at this time that the Isbrandtsen opinion does not rule out dual rates. Under the Isbrandtsen opinion and under the House bill, there is absolutely no prohibition against a conference agreement and there is no prohibition against dual rates, unless they are predatory devices for the purpose of putting somebody else out of business. In the case of the Isbrandtsen decision, it was admitted a dual-rate system was established for a predatory purpose, that of eliminating Isbrandtsen. If any steamship line wants to operate under a conference system or a dual rate system, it is legal to do so under the Isbrandtsen decision or the House bill, provided it does not operate in a predatory manner for the purpose of putting another steamship line out of business.

The actions which are declared to be predatory under section 14 of the Shipping Act are, first, the use of a fighting ship, which is outlawed and is a per se violation; second, the use of deferred rebates; third, what we had in the Isbrandtsen case, a predatory system for the purpose of eliminating a competitor.

Yet any steamship line that wants to operate under a conference and dual rate system can do so, legally, right now, or could do so under the House bill, unless it resorted to the predatory actions which were stricken by the Shipping Act of 1916 as unlawful, and which should continue to be unlawful.

The Commerce Committee makes some allusion to the rate war in Japan. What is the real story behind this so-called rate war? Far from the blitzkrieg it has been made out to be, it was really a sitzkrieg. As a matter of fact, the Celler committee record shows that even without the benefit of dual-rate contracts, and with so-called open rates in force where individual lines were supposedly imposing their own rates without conference concurrence, the rates in the Japanese trade were illegally agreed upon. In other words, rates were sup-

posedly "open." But, minimum rates had been covertly agreed upon by the lines and they had not been filed with the Federal Maritime Board. Moreover, the Japanese lines had voluntarily limited their sailings and carryings in the trade, again without approval by the Board. All of this tended to mitigate the so-called rate war. And, indeed, when the Japanese lines pressed for a complete end to open rates and a return to full stability, this movement was resisted by American lines because it would impair their argument—the same argument, by the way, which is now advanced in the committee report—before the Supreme Court of the United States. The three letters I ask unanimous consent to place in the RECORD now reveal the extent to which agreement was reached on so-called open rates in Japanese trade, during the "rate war" and the resistance offered by certain lines to closing the rates, ending the "war," and achieving stability because to do so would refute all of the arguments that the conferences had made to the Supreme Court and that the committee now makes to the Senate today.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JANUARY 30, 1957.

Mr. E. D. FLAHERTY,
American President Lines,
Los Angeles, Calif.:

Attached you will find six copies of agreed minimum rates on open items Japan/Pacific effective April 1, 1957.

Please note that we have made no reference to rates from Otaru on lumber, loose or bundled, nor have we mentioned plywood. We have written Tokyo today (copy attached) suggesting that we maintain the same spread that we have in the past, namely, lumber loose and bundled \$11 over base rate and plywood \$6 over base rate.

For your confidential information all lines except PFEL will be quoting similar rates as shown on the attached sheet. Although PFEL have announced a 10-percent increase they will still be considerably below us on a great many items. As you know, it has not been possible for us to convince PFEL that they should quote the same rates as the other lines in this trade. However, we

are not too much worried as in the past they have been quoting considerably below our rates. Regardless of this we have been maintaining a fair share of the cargo which we expect to maintain and with a little more effort in our solicitation our carryings could be increased particularly in the higher bracket.

E. J. FAGGIANO.

Note for New York and Chicago: For your ready reference we are attaching hereto two copies of the rate list referred to above together with copy of our traffic—28 of even date to Tokyo.

UNITED STATES LINES CO.,
FAR EAST DIVISION,
Manila, October 31, 1957.

Mr. W. B. RAND,
Vice President, United States Lines,
New York, N.Y.

DEAR MR. RAND: Prior to departure from Japan, the matter of my replacement on the Ethics Committee was discussed with Messrs. Ariyoshi and Hove, the other two members and it was agreed that they would propose Mr. Dodd as a replacement in the next joint conference meeting.

It was also proposed that the Ethics Committee be broadened to include other areas in the Far East in which case I would remain in the committee as a sort of roving member. Just how far this proposal will get is indefinite but I think it is a good idea.

Referring to my letter to you of September 9, 1957, Mr. Ariyoshi advised during the final meeting with him that he felt compelled to again request USL—New York to limit space in Japan on the USL mariners. He said that pressure from the Japanese group which he represented as a spokesman was overwhelming.

The day before departing from Japan, I received a draft of a letter from him, copy attached, with a statement that he planned to write you accordingly.

I have no sympathy with the Japanese request for limited space and refer you to the closing paragraph of my letter of September 9, 1957.

Very truly yours,

S. E. WALKER,
Far East Manager.

I find myself in the position of having to write to you again regarding the Japan-United States trade.

As you are probably aware, the stability and promotion of this trade are now in a very precarious condition due to an increasing number of malpractices rumored. The

conference is making its utmost efforts in taking countermeasures, by establishing "the Committee on Ethics", et cetera. However, coupled with the sharply declining freight market of the world, and ever more poignant competition aggravated among the carriers thereby, the condition is serious enough to remind one of the pre-1953 days and I, for one, am deeply concerned with it.

On this very important trade route the conference itself is on an unstable foundation, the contract/noncontract rate system currently being subjected to the most thoroughgoing scrutiny of the foremost legal brains of the United States. However, there is no denying that there exists somewhat peculiar stability on this trade although it may be regarded as quite anomalous from the point of an orthodox commercial view. While the rates on most staple items are open, all the Japanese lines are quoting these rates nearly the same, and at the same time, non-Japanese lines are voluntarily following suit with slight differences.

Furthermore, the Japanese lines have observed faithfully the self-imposed loading ceiling of 4,500 tons per vessel so far and have endeavored to transfer the excess to non-Japanese lines, whereby the latter could secure their fair share of the trade. During the period of the 3 years from 1954 to 1956, the Japanese and non-Japanese lines trading on this route had shared the cargo at a fairly stable demarcation line of 60 and 40 respectively.

However, the equilibrium was utterly shaken about a year ago, when your Mariner type vessels made their appearance on the trade and took away a lion's share of the trade by virtue of their superior speed and facilities. From the beginning of this year up to July, the average loading of U.S. Atlantic-bound cargo of a Mariner from Japan is 8,331 tons while that of Japanese vessels is 3,171 tons per vessel. You can readily see that now the Japanese lines are not carrying their ceiling of 4,500 tons.

The United States Lines has carried during the first 7 months of this year well over 25 percent of the total cargo moved, and in April the percentage was an alarming 34. In this connection, the Japanese lines are not only the victims of this tendency, but non-Japanese lines have also lost heavily as the United States Lines is now carrying more than a half of all the non-Japanese-flag carryings combined. The vacant space thus unused of both the Japanese and non-Japanese vessels can easily become a hotbed of malpractice.

As I have made it known several times in the past, I have no objection whatsoever to your introducing a new and fast fleet in the trade. On the contrary, I welcome such an improvement inasmuch as it is a betterment of the service on this trade. As long as the rates remain open, it is quite within the right to quote whatever rates one may wish and no unfair competition is constituted thereby.

I only wish to remind you, however, that there existed a practice, however irregular and anomalous it may be, which had worked quite successfully to safeguard the stability of the trade in this part of the world. Naturally, we may again resort to the orthodox method of dual rate system for the equilibrium in the trade in the near future, but until such time as the Supreme Court will render a favorable decision, we most sincerely and earnestly wish to keep the present flimsy but successful stability and safeguard the established balance of the trade.

I described the situation rather minutely in an earnest desire that you will realize the situation and come to share my conclusion

that in order to safeguard the stability, there is but one way left and that is that your line, being the strongest, sympathetically give a part of your carryings away to the less fortunate, by the same method as that of the Japanese lines, that is the self-imposed ceiling of loading cargo in Japan ports.

I am fully aware that this is entirely against the orthodox commercial practice but as I pointed out above, in this corner of the world, a modified method though peculiar works good sometimes.

I have to remind you again that this is only the temporary measure with a view to tiding over the hardest the most dangerous time.

Things should be restored to normalcy as soon as the time comes when the orthodox conference rules prevail in this important trade.

Will you kindly give your best consideration to the foregoing and let me hear your conclusion at an earliest date.

With warmest personal regards.

MAY 14, 1957.

DEAR SIR: Reference is made to letter from Mr. C. L. Dodd, dated April 24, dealing with correspondence and cables exchanged on lumber rates homebound and rates in general.

We are very much concerned with the rate situation from Japan and the possible effect that the closing of the lumber rate may have on future carryings of this commodity and principally any effect that the closing of an important open-rate item may have on the dual-rate system now before the Supreme Court.

Of greater concern is the statement in the penultimate paragraph of Mr. Dodd's letter reading as follows: "There is, of course, a very definite trend on the part of the Japanese lines, as well as a few foreign lines to close the rates on all commodities; they are using every angle to accomplish this even if it means closing such rates item by item."

If this is the plan of the Japanese lines, then we fear that irreparable harm would come to the dual-rate case now before the Supreme Court. It may be argued that the only issue before the Supreme Court is the legality of the contract-noncontract system but we must be very careful that nothing is done between now and the rendering of the decision by the Supreme Court to hurt our cause.

We are inalterably opposed to the closing of any additional open-rate items between now and the decision date. We must not only oppose such action on our own behalf but do everything we can both in Japan and at this end to enlist sufficient support to prevent the closing of any additional open-rate items until a decision has been rendered by the Supreme Court.

We will very much appreciate receiving prompt cable advices on any proposal put forth by either a Japanese-flag line or any other line to the closing additional open-rate items.

Very truly yours,

S. H. RICHTER.

MR. KEFAUVER. Finally, I ask unanimous consent to have printed in the RECORD, the profit figures of American lines for Far East trades only, during the period of the so-called rate wars. They show the trade to have been relatively profitable to American lines despite the rate war.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Profits from vessel operations, Far East trade

UNITED STATES LINES

Year	Net profits ¹	Number of voyages	Average net profit per voyage
1958.....	\$6,637,649	36	\$184,379
1957.....	8,037,377	29	277,151
1956.....	3,931,323	23	170,927
1955.....	2,143,511	20	107,176
1954.....	171,988	18	9,555
1953.....	944,567	21	44,979
1952.....	2,575,715	22	117,078
1951.....	2,384,319	18	132,462
1950.....	2,167,301	21	103,205
1949.....	4,103,443	26	157,825

¹ Includes profits from nonsubsidized, as well as subsidized operations.

Source: Maritime Administration Forms 72.

AMERICAN PRESIDENT LINES

Year	Net profits ¹	Number of voyages	Average net profit per voyage
1958.....	\$2,028,030	31	\$65,420
1957.....	2,561,438	40	64,036
1956.....	2,568,212	35	73,377
1955.....	2,317,124	38	60,977
1954.....	336,278	45	7,473
1953.....	2,079,369	44	47,258
1952.....	2,056,328	35	57,324
1951.....	3,200,436	35	91,441
1950.....	1,987,298	30	66,243
1949.....	2,076,830	29	71,615

¹ Profits do not include those realized from freight carriage on voyages of the *President Cleveland*, *President Wilson*, *President Hoover*, and other predominantly passenger-carrying vessels.

Source: Maritime Administration Forms 72.

STATES STEAMSHIP CO.

Year	Net profits ¹	Number of voyages	Average net profit per voyage
1958.....	\$1,559,347	69	\$22,599
1957.....	1,182,660	33	35,838
1956.....	¹ 1,821,581	¹ 38	47,936
1955.....	² 900,909	² 35	25,740
1954.....	³ 752,783	³ 27	27,881
1953.....	⁴ 1,036,379	⁴ 31	33,432
1952.....	⁵ 1,124,490	⁵ 26	43,250

¹ Includes net profit of \$282,748 from 6 voyages made by vessels chartered from others.

² Includes net profit of \$155,383 from 24 voyages made by vessels chartered from others.

³ Includes net profit of \$261,599 from 13 voyages made by vessels chartered from others.

⁴ Includes net profit of \$368,448 from 16 voyages made by vessels chartered from others.

⁵ Includes net profit of \$366,544 from 12 voyages made by vessels chartered from others.

Source: Maritime Administration Forms 72.

LYKES BROS. STEAMSHIP CO. (LINE D)

Year	Net profits ¹	Number of voyages	Average net profit per voyage
1958.....	\$2,631,959	37	\$71,134
1957.....	5,198,175	47	110,599
1956.....	5,720,539	45	127,123
1955.....	3,705,301	40	92,632
1954.....	2,356,370	40	58,909
1953.....	3,158,033	48	65,792
1952.....	² 6,869,998	² 51	134,706
1951.....	7,666,196	49	156,494
1950.....	³ 5,920,074	³ 44	134,547
1949.....	⁴ 7,947,025	⁴ 58	137,018

¹ All revenues listed are from subsidized operations.

² Includes net profit of \$275,448 from 6 voyages made by vessels chartered from the U.S. Maritime Administration.

³ Includes net profits of \$135,826 from 1 voyage made by a vessel time-chartered from another company.

⁴ Includes net profits of \$1,222,300 from 16 voyages made by vessels chartered from others.

Source: Maritime Administration Forms 72.

Mr. KEFAUVER. No need whatever has been shown in the brief Senate hearings or in the lengthy hearings before either the Celler committee or the Bonner committee for the dual-rate system and all bonds it imposes on American shippers. The conference lines know this to be the case, but are loathe to admit it. Among themselves, however, they are more candid, as witness a letter from the San Francisco manager of a large Japanese line to his principals abroad wherein he declares:

The Pacific coast members also feel that the committee should not show a weakness at this time, as all of the testimony presented up to this date has not greatly helped the dual-rate situation, and that if legislation was requested at this time, our position would be very weak. (Celler committee hearings, pt. 3, vol. 1, at p. 274.)

INDEPENDENT COMPETITION IS A BRAKE ON
MONOPOLISTIC PRACTICES

The preservation of independent competition in the foreign trade of the United States is of consummate importance because it is the only brake on monopolistic practices of steamship conferences. This means that not only must existing independent carriers be allowed to continue independent operation, but in addition, new entrants into the industry must be encouraged and conference members' right to leave the conference and establish themselves as independents must be preserved.

Why is it that independent carriers are the only check on monopolistic practices in ocean shipping? The reason is simply that there is no rate regulation. Shipping conferences are monopolistic cartels and, without the threat of price competition from independents, will have the unrestrained power to raise rates to unreasonably high levels.

As Chairman Morse of the Federal Maritime Board said in his testimony before the Bonner committee:

The regulation of water carriers in the foreign trade of the United States is substantially different from the regulation of carriers in our domestic trades. The Board has been given no direct control over the reasonableness of rates in the foreign trade. It may not prescribe either maximum or minimum rates in these trades; in fact, it has little to say as to the measure of the rates of common carriers by water serving our foreign trade. There is no requirement for the advance filing of freight rates in the foreign trade, nor any authority to suspend these rates. However, by its General Order 83, the Board requires common carriers by water in the foreign trade to file their export rates within a period of 30 days after they have become effective and it requires a similar filing of all rates established by common carriers by water pursuant to any agreement subject to the Board's jurisdiction.

Lloyd Tibbott, Chief of the Office of Regulation of the Federal Maritime Board, stressed this important point in his testimony before the Bonner committee:

Mr. TOLLEFSON. Do I understand from what you said, Mr. Tibbott, that you have no control over the rates? People may complain to you about rates being too high. Can you legally do anything about the rates if you think they are too high?

Mr. TIBBOTT. No; the utmost that could be done would be to initiate a proceeding that the rate was so high as to be detri-

mental to the commerce of the United States.

Mr. TOLLEFSON. Suppose you made a finding that it was detrimental to the commerce of the United States. What could you do?

Mr. TIBBOTT. The Board could withdraw its approval of the agreement at that stage.

Mr. TOLLEFSON. The conference agreement?

Mr. TIBBOTT. The conference agreement; yes, sir. The lines individually could continue to charge the same rate if the agreement was disapproved but they could not act collectively.

Mr. TOLLEFSON. So that they could continue to charge the same rate and you could not stop them?

Mr. TIBBOTT. No; we could not stop them.

Thus, the fundamental problem is brought into sharp relief. On the one hand, monopolistic cartels of ocean shippers in the U.S. foreign commerce are permitted to exist by the act of 1916; the antitrust laws notwithstanding. However, no effective regulation is imposed on their rates. This is, indeed, a unique situation in our American economy. The usual practice, when monopolies are chartered by the Government, is to impose rate regulation upon them.

Mr. President, there is no substantial difference between the problems affecting ocean commerce and those affecting air commerce, yet the Civil Aeronautics Board has substantially more power to give the American shipper a fair deal than is proposed under the Senate bill.

In the case of ocean marine carriers, however, not only are their rates unregulated, but in addition, the conferences are specifically authorized to regulate themselves. The granting of authority to a monopolistic cartel to regulate its own rates seems to me to be unparalleled in our American economic history.

While the Board has no rate regulating authority, it does, however, possess the power to disapprove conference agreements which operate "to the detriment of the commerce of the United States." It would seem that this authority would effectively permit the Board to control rates. Unfortunately, however—and indeed in my view, strangely—this power appears to have been of limited value since it has never actually been exercised to compel a conference to reduce rates—"The American Shipping Industry and the Conference System," 2 Stamford Law Review 136-153, 1958. As former Assistant Attorney General in Charge of Antitrust, Robert A. Bicks, pointed out in his testimony before the Bonner committee:

In shipping, in the more than 40 years of the 1916 Shipping Act's life, neither the Board nor its predecessor has ever—I repeat, has ever—forced a shipping conference to reduce its rates.

Bicks went on to summarize the importance of independent carriers with greater clarity:

The upshot is that American shippers, as well as American purchasers of foreign-made goods, are at the mercy of rates jointly set by private groups—the shipping conferences. Moreover, 82 percent of these conferences are dominated by foreign shipowners. And there is absolutely no effective American Government review of rates thus fixed. Against this background, whatever limited rate com-

petition independents may afford takes on added importance. For independents provide the prime effective check on foreign fixed shipping rates. And it is this very check that the dual-rate system seeks to destroy. For these reasons we urge that Congress have the benefit of some years of operating experience before reaching the drastic conclusion that dual-rate systems "designed to stifle outside competition" and "employed as predatory devices" may stand.

There is no doubt that regulation of America's foreign trade cannot be accomplished with anything like the degree that purely domestic economic activities can be regulated. This fact makes even more urgent the encouragement and preservation of independent carriers, if American shippers are to be protected against unreasonably high, monopoly rates. M. S. Crinkley, executive vice president of Isbrandtsen, made this point with great clarity before the Bonner committee:

Shipping on foreign-trade routes is international in character and it is claimed no effective or complete governmental control of rates is possible. In this country we do allow certain monopolies, such as public utilities, but in all such cases prices and rates are completely controlled by some regulatory agency for the protection of the public. Serious consideration should not be given to a rate device which would enable these international shipping cartels to obtain a monopoly of shipping on American foreign trade routes with no governmental overall control of rates. As a matter of common sense, where such conference groups are allowed to exist and operate, the public interest can only be protected by the presence of energetic and bona fide independent competition.

Mr. Crinkley prepared two tables which I should like to insert in the RECORD at this time. The first shows the shipping rates on various products from New York and from Hamburg to various Eastern and South American ports.

I ask unanimous consent to have the first table printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

From/to	Karachi, Bombay	Hong Kong	Buenos Aires	Genoa, Piraeus, Istanbul, Alexandria
Cotton textiles:				
New York---	55.50	60.00	66.00	63.25
Hamburg---	38.64	36.59	54.00	20.84
Machinery:				
New York---	52.50	56.00	51.00	38.50
Hamburg---	29.14	29.42	24.71	24.69
Hand tools:				
New York---	52.50	77.00	66.00	63.25
Hamburg---	26.61	29.42	26.75	22.83
Electric motors:				
New York---	52.50	56.00	57.00	38.50
Hamburg---	29.14	29.42	24.71	24.69
Radios:				
New York---	55.50	56.00	66.00	63.25
Hamburg---	31.67	29.42	24.71	24.69
Typewriters:				
New York---	55.50	77.00	66.00	63.25
Hamburg---	38.64	36.59	37.96	25.60
Unboxed automobiles:				
New York---	39.00	47.25	36.00	33.00
Hamburg---	30.09	27.99	14.78	20.84

Mr. KEFAUVER. Mr. President, the figures in this table reveal, in many instances, that the rates from New York are 100 percent and more higher than those from Hamburg. For example, the rate per ton on electric motors from New

York to Hamburg is \$52.50. From Hamburg, it is \$29.14. To Buenos Aires, the New York rate is \$57 and the Hamburg rate is \$24.71. Loading costs in New York are only \$3.50 or \$4 per ton more than in Hamburg.

The second table prepared by Mr. Crinkley shows conference contract rates on leaf tobacco from Virginia and North Carolina ports, and on cotton from U.S. gulf ports to various oversea destinations.

I ask unanimous consent to have the second table printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

To	Leaf tobacco (100 pounds)	Cotton (100 pounds)
London, Liverpool, and Antwerp		
Rotterdam, Hamburg, and Bremen	\$1.65	\$1.45
Genoa and Alexandria	2.85	1.45
Yokohama and Kobe	4.00	2.00
Hong Kong	4.00	2.25
Manila	3.40	2.00
Buenos Aires	3.75	2.95
Rio de Janeiro and Santos	5.50	2.95
La Guairo and Puerto Cabello	5.00	1.65
Valparaiso and other South American ports	6.75	1.80
Australian ports	4.25	2.75

¹ Equivalent.

Mr. KEFAUVER. Mr. President, the table shows, for example, that it cost \$1.65 to ship 100 pounds of leaf tobacco to Rotterdam, and \$3.75 to ship the same amount of leaf tobacco to Buenos Aires. There is active, independent competition on shipments to Rotterdam. However, shipments to Buenos Aires are effectively tied up by the conference cartels.

The monopoly power of conference cartels, when unrestrained by independent carriers, permits conference members not only to raise rates unreasonably, but in addition, to take advantage of American shippers in other ways. Mr. Bransten of the Pacific Coast Coffee Association, brought this to the attention of the Bonner committee in his testimony.

There is absolutely no nonconference competition in the trades which employ the dual-rate system on coffee to the Pacific coast. At the present time, therefore, the coffee receivers on the Pacific coast have absolutely no bargaining position concerning the contents of the dual-rate agreements, and they have no statutory assistance in that respect under the present law.

They are compelled to enter into any dual-rate agreement that the conference places before them because, for competitive reasons, they cannot pay the noncontract rates, which are \$3 per ton higher than the contract rates in these trades.

The result of this has been that the dual-rate agreements in these trades place very heavy obligations on the receivers of coffee, and practically no obligations on the carriers. Because of this monopolistic situation, the dual-rate conferences have been able to disregard the interests of the Pacific coast coffee industry in the matter of rates and steamer service.

Suffice it to say here that the action of these dual-rate conferences has placed the Pacific coast coffee industry at a competitive disadvantage with respect to the matter of freight charges.

I desire to emphasize that under the present state of the law the Pacific coast coffee receivers are helpless to do anything about this situation. They have no outside steamship competition to which they can resort for assistance. The present statutes afford them no protection of any substance.

In addition, Mr. President, the Federal Maritime Board has pointed out that the existence of healthy, active, independent competitors insures "conference consideration of shipper needs and desires." Isbrandtsen provides a dramatic example of the impact which independent carriers can have in keeping conference rates within reasonable bounds. Isbrandtsen was able to carry 30 percent of the cargo in the Pacific-Japan trade, with only 12 percent of the sailings. It did this by maintaining its rates at levels substantially below those of the conference cartel. One conference member admitted to the Board that the conference rates were too high, and that Isbrandtsen discovered this conference vulnerability and took advantage of it by hard-hitting competition. As this conference member put it:

We are simply holding up an umbrella under which Messrs. Isbrandtsen have been thoroughly enjoying themselves (Isbrandtsen at p. 575).

The Board admitted that it could not see that—

The presence of an independent in the trade does not aid in keeping conference rates at a somewhat reasonable level (Isbrandtsen at p. 762).

The Department of Agriculture has taken the view that the dual-rate system is a tool of monopoly and a device for the elimination of competition to the conference cartels. In a powerful statement before the Bonner committee, George A. Dice, Director of the Special Services Division, Agricultural Marketing Service of the U.S. Department of Agriculture, speaking for the Department, said:

Our objection to the dual-rate system is quite simple. We believe it to be unduly discriminatory and prejudicial to the interests of agricultural shippers. Under the system two identical shipments from the same port, in the same vessel, stowed side by side in the same hold, moving to the same destination, and receiving exactly the same transportation service, are or may be charged for at different rates. Not only do we believe this practice to be unduly discriminatory and prejudicial against the interests of shippers but we believe it to be a form of retaliation against a shipper who does not desire to tie himself and his business to an exclusive patronage contract.

It is our view that the dual-rate system and its coercive contractual arrangements tend to deprive shippers of agricultural commodities of the freedom of choice of transportation service. If practiced successfully, the system would result in a monopoly for the steamship conference lines. We say "if practiced successfully" because the elimination of competition from independent steamship lines appears to be the objective of the dual-rate system.

The Department is agent for the International Cooperation Administration in the shipment of agricultural commodities. The Department, however, does not become a party to contractual arrangements of the sort followed under the dual-rate system, although, in instances, because of the nature

of the programs involved, members of the conferences do extend special rate consideration.

It is our opinion that if a dual-rate system is practiced and if it is successful in eliminating competition from independent lines, it could eliminate this rate consideration on special program shipments.

We believe that if, through the dual-rate system, a steamship conference gains a monopoly, rate increases might very well follow. Certainly the factor of competition would not be present to deter such instances. This would be extremely unfortunate both from the standpoint of agricultural shippers and exporters.

I have received a letter from the Acting Secretary of Agriculture in which he, speaking for the Department, once again reaffirmed the position taken by the Department in its letter of July 26, 1961, supporting the version of H.R. 6775 as it passed in the House of Representatives. I ask unanimous consent that this letter be printed in the RECORD, and I also ask unanimous consent to have printed in the RECORD two letters from the Secretary of Agriculture to the chairman of the House Committee on Merchant Marine and Fisheries and the Senate Committee on Commerce.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF AGRICULTURE,

Washington, D.C., September 7, 1961.

HON. ESTES KEFAUVER,
Chairman, Subcommittee on Antitrust and Monopoly, Committee on Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR KEFAUVER: This has reference to your request for a statement of our views regarding H.R. 6775 as reported by the Senate Committee on Commerce. This bill would amend the Shipping Act of 1916, as amended, to provide for the operation of steamship conferences.

As originally introduced on February 15, 1961, the bill was H.R. 4299. This Department reported favorably on that bill by letters dated March 17 and April 3, 1961, to the chairman of the Committee on Merchant Marine and Fisheries of the House. After a number of days of public hearings on H.R. 4299 by that committee of the House, H.R. 6775 was introduced as a substitute bill and was passed by the House on June 12, 1961.

On June 15, 1961, we received a request from the chairman of the Senate Committee on Commerce for a report on H.R. 6775 as passed by the House and, in response to that request, we informed the committee on July 26, 1961, that we were agreeable to passage of the bill by the Senate. Our position with respect to this bill remains the same as that stated in the letters to the House committee and in the letter of July 26 to the Senate committee.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

CHARLES S. MURPHY,
Acting Secretary.

DEPARTMENT OF AGRICULTURE,

Washington, D.C., March 17, 1961.

HON. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN BONNER: This has reference to your letter of February 16, 1961, requesting our comments on H.R. 4299, a bill to amend the Shipping Act, 1916, as

amended, to provide for the operation of steamship conferences.

This bill, among other things, would authorize a carrier or conference of carriers in foreign commerce, under specified conditions, and subject to approval of the Federal Maritime Board, to enter into contracts with shippers at rates lower than published tariff rates and providing for exclusive patronage by the contracting shippers.

The Department believes passage of this bill would promote stability in the steamship industry while protecting the interests of shippers.

For many years, this Department opposed the use of the contract/noncontract or dual system of rates because of the extent to which discrimination, prejudice, and reprisals could be practiced against shippers under such system. At the same time, however, we have recognized that practical limitations on the ability of a regulatory agency to effectively regulate operations of foreign-flag vessels, and the fact that most trades are overtonnaged much of the time, made some form of self-regulation by conferences of carriers necessary.

Much of the testimony submitted to your committee by interested persons during the series of hearings in 1959 was heard by representatives of this Department. In addition, we have given the matter considerable study and submitted to your committee on April 1, 1960, certain suggestions designed to promote stability in the steamship industry and to protect the interests of shippers.

We note that a number of the suggestions (or modifications of them) contained in our submission of April 1, 1960, have been incorporated in H.R. 4299 and that additional safeguards have been added to minimize the possibility of destructive competition, and further to assure a higher degree of rate stability. We believe that, with these safeguards, and with the more intensive supervisory role provided for the Federal Maritime Board, the Department need no longer object to the use of exclusive patronage contracts.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN,
Secretary.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 26, 1961.

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate.*

DEAR SENATOR MAGNUSON: This has reference to your letter of June 15, 1961, requesting our comments on H.R. 6775, an act to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

This act would, among other things, authorize carriers or conferences of carriers in foreign commerce, under specified conditions and subject to the approval of the Federal Maritime Board pursuant to stated requirements or safeguards, to enter into contracts with shippers providing for rates lower than published rates upon agreement by such shippers to give all or any part of their patronage to such carriers or conferences of carriers.

The Department has been opposed to the use of the exclusive contract or dual system of rates because of the extent to which discrimination, prejudice, and reprisals can be practiced against shippers under such a system. However, we believe passage of this act, as presently written, will promote stability in the steamship industry and protect the interest of the shippers to a greater extent than at present.

The Department would, therefore, be agreeable to the passage of this act by the Senate.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN,
Secretary.

Mr. KEFAUVER. Mr. President, the Department of Justice's concurrence in these views is well known. In urging the Bonner committee to provide effective safeguards against the monopoly power of conference cartels, Assistant Attorney General Loevinger stressed the importance of the preservation and encouragement of independent competitors last month. He said:

Under the conference system, carriers are free to join together to set the level of rates they choose, and to obtain that stability of rates amongst themselves which they deem desirable. Carriers that do not desire to join the conference should be free to engage in business independently. Furthermore, no check on unconscionable rate charges will remain if conference members can, by use of dual-rate contracts or other means, eliminate the nonconference competitor which may serve as the only check upon extortionate rate practices. That it is in the public interest to preserve some rate competition and to preserve the independent who may provide it is illustrated by just one example which our investigation has produced. In a certain trade covered by a Federal Maritime Board-approved agreement, the entry of an independent carrier and the rate competition to which that entry gave rise caused the gradual reduction of the rate on an important commodity from more than \$80 per ton to about \$40 per ton. There are those who would say that the rate cutting of the independent had caused instability or even a rate war. Yet, documents showed—and, incidentally, these were documents of an American carrier, so that it will be clear that foreign operating costs were not used as the yardstick—that the \$40 per ton rate still afforded a reasonable profit on that commodity.

This is what concerns us about the attempts to delete the safeguards from H.R. 6776. The steamship lines understandably favor conditions more conducive to a \$80 rate than a \$40 rate. Shippers who have testified in favor of a so-called effective tying device, are more interested in so-called stability of rates than in rate levels. This means they are less concerned about the actual rate than they are in making certain that no competitor obtains a lower rate than the one which they are paying. In the final analysis, therefore, if the safeguards are stripped from H.R. 6775, with the result that conference and dual-rate agreements may be approved by the FMB even where they are intended to, or are reasonably likely to exclude other carriers from the trade, the public interest will suffer and the consumer will suffer because in the end he will pay in the form of higher prices for the goods which will have been transported under monopoly conditions. We do not conceive it to be in the public interest to give the conferences a blank check on the pocketbooks of American consumers without knowing what the ultimate costs in the form of high noncompetitive freight rates are likely to be. Moreover, foreign-flag carriers, rather than American lines, will receive the largest proportion of such monopoly profits. For the foregoing reasons, the Department of Justice restates once more its conviction that the overall public interest of the United States will not be advanced by surrender of our traditional principles of freedom of opportunity.

Mr. President, one of my good staff members has handed me a notice as to what the assistant legislative director, the American Farm Bureau Federation, Mr. Matt Triggs, said before the Celler committee of the House:

We believe that it is important to preserve the competitive influence of independent carriers to insure that ocean shipping conferences may not abuse the ratemaking authority granted them by exemption from antitrust statutes. The exclusive dual rate contracts used by many ocean shipping conferences can operate to eliminate the influence of independent carriers in establishing ocean shipping rates. We believe that any legislation to modify the Shipping Act of 1916 would [sic] insure that the competition of independent lines is not impaired (Celler hearings, p. 567).

On August 31, I wrote the Attorney General and asked his views on H.R. 6775 as reported by the Senate Commerce Committee. I read his reply of September 5:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 5, 1961.
Hon. ESTES KEFAUVER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KEFAUVER: This is in response to your letter of August 31, 1961, requesting the views of the Department of Justice on H.R. 6775, as it was reported by the Senate Committee on Commerce.

The Senate committee version of H.R. 6775 differs materially from the bill as passed by the House of Representatives. The bill, as it was passed by the House of Representatives, contained specific safeguards to prevent ocean steamship conferences from using dual-rate systems or other concerted activity as predatory devices to drive nonconference competition out of business. These safeguards have been omitted in the Senate committee bill. In particular the Senate committee bill has deleted: (1) The provision that the dual-rate contracts referred to in the bill shall not be intended or reasonably likely to cause the exclusion of any other carrier from the trade; and (2) the provision that the Board shall not approve agreements whose probable effect will be reasonably likely to exclude any other carrier from the trade.

The deletion of these provisions would have the effect of reversing the rule of the *Isbrandtsen* case, thereby permitting ocean steamship conferences, which are international cartels, to stifle independent competition by resort to predatory dual-rate systems. In the opinion of the Department of Justice these provisions constitute competitive safeguards which are indispensable to any reasonable enactment on this subject. The public interest would be disregarded were these provisions to be omitted.

It is our opinion that no legislation on this subject should be enacted unless such provisions are included. We urge that these provisions, as they have appeared in the House-enacted bill, be restored.

In addition, for your information I am attaching a copy of a letter from Deputy Attorney General Byron White to Senator WARREN G. MAGNUSON, which expresses in detail the views of the Department of Justice on the Senate Merchant Marine and Fisheries Subcommittee Print, which is substantially similar to the Senate committee version of H.R. 6775.

Sincerely,

ROBERT KENNEDY,
Attorney General.

Mr. President, previously the Senator from Wisconsin [Mr. WILEY] had printed in the RECORD a letter of August 16, 1961, to the Senator from Washing-

ton [Mr. MAGNUSON] from the Honorable Byron White, Deputy Attorney General of the United States, which states in some detail the objections of the Department of Justice to the approach taken by the Senate Commerce Committee in its redrafting of H.R. 6775. I should state that subsequent to this letter the committee made a few of the corrections suggested by the Department; however, most of the objections are not met by the bill before us; after I finish my general presentation, I shall offer amendments to remedy these defects.

It seems to me unequivocally clear that the existing ability of independent carriers to compete on a parity with federally subsidized members of shipping conference cartels must be preserved, if American shippers are to be protected against monopolistic abuses.

In my view, Mr. Max Kampelman, counsel for the American-owned independent Sabre Line has summarized this problem most effectively:

The protections of the Bonner bill are crucial if SABRE is to survive as an independent line. We believe that the antitrust features of the House bill grant us a vital measure of protection. We further believe that the ratemaking safeguards of the bill are in the public interest. The very fact that the conferences are opposed to the antitrust and ratemaking safeguards is a clear indication of their intent, should the recommendations of the Senate committee become law. We regret that the competition offered by independent lines is today so meager. Meager as it is, however, it is the only effective check against excessive conference rates.

THE U.S. POLICY HAS ALWAYS BEEN TO PRESERVE AND PROTECT INDIVIDUAL COMPETITION

Section 14 of the shipping action of 1916 proscribes certain activities by carriers which were deemed by the Congress to be particularly noxious in their impact on American foreign trade; for example, deferred rebates, fighting ships, and other retaliatory, predatory devices. Thus, section 14 Second prohibits the use of a fighting ship, which is a vessel used in a particular trade by a carrier or a group of carriers, for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade. The Alexander report of 1914, on which the 1916 Shipping Act was based, shows clearly that what Congress had in mind when it said driving another carrier out of the trade, was the protection of independent competition. The Alexander report said:

The use of fighting ships and deferred rebates * * * is * * * prohibited in both the export and import trade of the United States. All carriers should be prohibited from retaliating against any shipper by refusing space accommodations when such are available, or by resorting to other unfair methods of discrimination, because such shipper has patronized an independent line, or has filed a complaint charging unfair treatment, or for any other reason.

The 45-year-old intent of Congress to protect independent carriers was restated with great vigor in the Isbrandtsen case. There, the Court said:

It must be emphasized that the freedom allowed conference members to agree upon terms of competition subject to Board approval is limited to the freedom to agree upon terms regulating competition among

themselves. The Congress in section 14 has flatly prohibited practices of conferences which have the purpose and effect of stifling the competition of independent carriers (p. 492).

The Board agreed with the Court that—

The continued participation of Isbrandtsen in the trade, as well as the existence of strong shipper organizations, stand as strong deterrents against exorbitant freight rates and other objectionable monopolistic practices. (Japan-Atlantic-Gulf Freight Rate Conference, p. 739.)

Mr. Morse, Chairman of the Federal Maritime Board, stated the law as follows:

In the trades to and from ports of the United States, the Board's precedent decisions have insured that carriers entering a trade will be entitled without discrimination to admission to full membership in the conference covering such trade. A carrier may nevertheless choose to operate as an independent, that is, to remain outside of the conference. The choice is up to each individual carrier, for a carrier cannot be forced to join a conference.

The use of the dual-rate system has been surrounded by safeguards directed to the prevention of any greater limitation upon competition than is absolutely necessary. Thus, the Board's predecessors have held that the dual-rate system will not be approved when inaugurated by a single line which seeks to exclude all other carriers (*Eden Mining Co. v. Bloomfield Fruit & Steamship Co.*, 1 U.S.S.B. 41 (1922)).

The House report on the version of H.R. 6775—House Report No. 498, June 8, 1961—makes clear that it was the intention of the Bonner and Celler committees to preserve this long-lived policy of the Congress of fostering and protecting those lines which desire to compete with the conference cartels on an independent basis. The committee, referring to one of the antitrust safeguards, specifically said that it was "intended to protect the status of nonconference carriers." Moreover, several provisions of the House version of H.R. 6775, retained in the Senate version, make it clear that the continuing existence of independent carriers is assumed.

For an example, the provision of section 2 of the bill, which provides for the prompt release from a contract of a contract shipper as to any shipment for which the contracting carrier or conference cannot provide as much space as the shipper requires on reasonable notice, would be meaningless, if independent alternative carriers were unavailable to the shipper. Also, the provision of the bill which permits contract shippers to terminate at any time without penalty upon 90-day notice, would be meaningless and of no avail to the shipper if he does not have independent carriers to turn to. It seems to me, therefore, that for the Senate to eliminate the antitrust safeguards from H.R. 6775 and thereby so emasculate the bill as to effectively eliminate the ability of individual carriers to compete with conference cartel monopolies, would be a basic contradiction of the underlying assumption of the bill. And, this is true even of the version approved by the Senate Commerce Committee. The American shipper must always have independent carriers to turn to.

The recent Isbrandtsen problem makes dramatically clear the importance of reaffirming the longtime congressional policy of protecting independent carriers. Isbrandtsen sought to obtain Board approval of acquisition by it of the American Export Line, and the obtaining by it of an operating subsidy agreement. Isbrandtsen is the largest independent U.S. line. Admiral Wilson, Chairman of the Federal Maritime Board at that time—that is, 1960—wrote the following to Isbrandtsen:

After careful consideration of this matter, the Board has determined that, in the event it should award a subsidy agreement to Isbrandtsen Steamship Co., Inc., it will require that such agreement contain a provision to the effect that the operator agrees to maintain conference rates, rules, and regulations effective for the subsidized services contained in such agreement, irrespective of whether the operator is a member of such conference, unless, due to special circumstances, the Board, in its sole discretion, should decide to modify temporarily this requirement as to a particular conference.

In other words Admiral Wilson was telling Isbrandtsen that if it wished to receive a subsidy, it would have to get in line with conference rates and stop competing with conference cartel members.

I find this shocking. It is forcing an independent, competing, American company to fall in line with the wishes and best interests of a cartel monopoly which, incidentally was dominated by foreign lines. It is incumbent upon us to insure that this sort of Board action never occurs again.

It may be that the Senate has no choice but to authorize a dual-rate contract system which enhances the monopoly power of cartelized conferences. But, we have no right, either legally or morally, to refrain from strongly voicing our objection, both on the bill we approve and in the legislative history, to abusive practices by both conferences and the Board itself, designed to oppress, discourage and impede independent carriers.

WHY COMPETITION IN OCEAN FREIGHT RATES MUST BE ENCOURAGED

It has been argued that competition in ocean freight rates is bad because it will result in decreased revenues for American carriers, most of which are members of the various conferences in the foreign commerce of the United States. In fact, Senate Report No. 860, 87th Congress, 1st session, at page 23, goes so far as to say that—

No American-flag line today desires to operate on a regular nonconference rate-cutting basis. Isbrandtsen has announced its intention to become a conference operator, and, according to testimony given by Mr. Crinkley, the Isbrandtsen Co., quite apart from its becoming subsidized, plans to join conferences.

I would like to comment on the first sentence of this quote with respect to American-flag lines today desiring to operate on a regular nonconference rate-cutting basis. It is difficult to surmise whether U.S. lines presently operating on a nonconference basis will necessarily wish to continue to operate on this basis, or whether they desire to compete openly and actively. But, it is true that there

are a large number of U.S. lines who presently do operate outside the conferences in a number of trades. I have checked with the Maritime Administration and I have a list of 28 steamship conferences against which at least one U.S. line competes independently today. Many of these are major conferences and I request that the list be made a part of the RECORD at this point.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

List of steamship conferences serving the foreign commerce of the United States as of Sept. 1, 1961, in which at least 1 U.S. line operates outside the conference

Name of conference	Conference No.	Use dual rates
Trans-Pacific.....	14-1	Yes.
North Atlantic Spanish.....	138	No.
Trans-Pacific Freight Conference of Japan.....	150	No.
Japan-Atlantic and Gulf.....	3103	No.
U.S.A./South Africa.....	3578	No.
South Africa/U.S.A.....	3579	No.
Atlantic and Gulf/Panama Canal Zone, Colon and Panama City.....	3868	Yes.
North Atlantic Continental.....	4490	Yes.
Norway/North Atlantic.....	5300	No.
New York Freight Bureau (Hong Kong).....	5700	Yes.
Straits/New York.....	6010	Yes.
U.S. Atlantic and Gulf-Santo Domingo.....	6080	No.
U.S. Atlantic and Gulf-Puerto Rico.....	6120	No.
The Pacific Coast Puerto Rican.....	6130	No.
Straits/Pacific.....	7090	Yes.
Atlantic and Gulf, Red Sea and Gulf of Aden.....	7530	No.
Leeward and Windward Islands and Guianas.....	7540	Yes.
North Atlantic Portuguese.....	7560	No.
American West African (Azores only).....	7680	No.
The India, Pakistan, Ceylon and Burma Outward.....	7690	Yes.
North Atlantic French Atlantic.....	7770	Yes.
Middle East Mediterranean West-bound.....	7880	No.
U.S. Atlantic and Gulf-Bermuda.....	7900	No.
North Atlantic Mediterranean.....	7980	Yes.
West Coast of India and Pakistan/U.S.A.....	8040	No.
Japan/Puerto Rico and Virgin Islands.....	8190	No.
Atlantic and Gulf-Singapore, Malaya and Thailand.....	8240	Yes.
Greece, Turkey and Syria Area West-bound Tobacco.....	8350	No.

NOTE.—Total number of conferences, 28; total number using dual rates, 11.

Mr. KEFAUVER. Moreover, Mr. President, in addition to Isbrandtsen and American Export, the following lines operate in at least one trade on a nonconference basis: Prudential, Stevenson, United States Lines, Robin Line, Lykes Line, American Union Transport, Moore-Mac, States Marine, and Central Gulf.

In addition to these U.S. lines—which use American-flag ships and American crews—there are other shipping lines which are U.S. owned and which operate independently of conferences. The Sabre Line is a good example. It carries a sizable portion of the Far East tonnage in competition with the conferences.

All of the profits from these competitive U.S.-flag ship lines and U.S.-owned lines redound to the benefit of the United States.

As to Isbrandtsen, the largest U.S. line operating in competition with the conferences, there is considerable doubt whether this line really desires to join the conferences or is being forced into this by the Maritime Administration. In my view, it is peculiar that the U.S.

agency which is charged with the duty of regulating conferences should act as their agent in forcing independent U.S. lines to join the conferences by withholding a subsidy. However, in any event, Isbrandtsen is operating on a competitive basis outside the conferences today.

If the Senate Commerce Committee version of H.R. 6775 is adopted, not only will lines such as Isbrandtsen be forced into joining conferences, but also in the future U.S. lines will be economically precluded from dropping out of conferences and continuing on a competitive and independent basis. Likewise, new companies will be foreclosed from entering a trade on a nonconference basis.

In my view, it is also not as important whether independent competitors are U.S. lines or foreign lines, because the primary benefactor of competition is the U.S. shipper. Competition, whether by domestically or foreign-owned carriers, acts to hold down conference rates to a reasonable level, as roughly half of world trade consists of exports from and imports into the United States. The benefits of reasonable and competitive ocean freight rates are not only enormous but redound to the great mass of American businessmen and farmers who import or export innumerable commodities. From their standpoint, it does not make too much difference whether the rates are held down by competition coming from independent U.S. lines or independent foreign lines. Their competitive position in world trade is markedly affected by the reasonableness of ocean freight rates.

FOREIGN CARRIERS WOULD BE THE PRIME BENEFICIARIES OF THE MONOPOLY RATES WHICH THE SENATE VERSION OF H.R. 6775 WOULD PERMIT CONFERENCE CARTELS TO CHARGE

The effect of antitrust safeguards is, of course, to prevent undue monopoly power. But more important, prevention of monopoly power prevents unreasonably high prices. The elimination of the antitrust safeguards from H.R. 6775 would permit conference cartels to set unreasonably high prices.

Who would benefit by such a grant of monopoly in power? The answer is that it is foreign carriers—not American carriers—who would most benefit, because it is the foreign carriers who dominate the conference cartels engaged in U.S. foreign trade.

I do not believe that I can emphasize this important point half as well as Mr. Crinkley did in his testimony before the Bonner committee. Let me quote from Mr. Crinkley's statement:

In considering the whole question, it should be constantly repeated that the interests which are mostly involved with the conference contract dual rate system, and who would be the chief beneficiaries of any advantages to be gained through its legalization, would be the about 360 foreign-flag lines operating on American foreign trade routes.

It may be thought I am exaggerating the circumstances involved, but if you examine the roster of the 63 conferences now using the conference contract dual rate system, you will see that as to 16 of these conferences there are no American-flag-line members; as to 12 other of these conferences there is only 1 American member. As to these various conferences using the conference con-

tract dual rate system, there is 1 where there are 23 foreign-flag members and 1 American, another with 16 foreign-flag members and 1 American, another with 14 foreign-flag members and 1 American, another with 11 foreign-flag members and 1 American, another with 9 foreign-flag members and 1 American, another with 7 foreign-flag members and 1 American, another with 15 foreign-flag members and 2 American, another with 14 foreign-flag members and 2 American, another with 13 foreign-flag members and 2 American, another with 12 foreign-flag members and 2 American, another with 9 foreign-flag members and 2 American, another with 18 foreign-flag members and 3 American, another with 20 foreign-flag members and 4 American, and another with 45 foreign-flag members and 7 American.

VALUE OF NONCONFERENCE COMPETITION

It appears to be the belief of some that the foreign commerce of this country should be dependent entirely on carriers who are members of conferences—that there should be no nonconference carriers. This, in my opinion, will be the end result of the Commerce Committee's bill. With the protective provisions of the House bill removed, the conferences will have carte blanche power to destroy independent carriers or force them into the conferences. I cannot be a party to the granting of legislative authority to any cartelized monopoly to force out all independent competition, leaving the public interest to the whims of such cartels. We know too well the results. Why did we break up the German international cartels? Why do we demand Government regulations to fill the gap caused by antitrust exemptions in trades where monopolies have been recognized as in the public interest?

In the interest of American exporters, importers, and consumers, it is essential that independent competition in the ocean freight industry be preserved, and that conferences not be permitted to employ devices intended to, and which would exclude or eliminate nonconference carriers from operation in a trade.

First, independent competition provides the only effective brake upon the level of ocean freight rates which are established through rate-fixing agreements by steamship conferences and unregulated by the Government. Where members of other industries are permitted to set rates, fares, or tariffs through cooperative arrangements, exempt from the antitrust laws, the Government is able to scrutinize the results and adjust them if they are unreasonable and not in the public interest. The point was stressed in testimony before a special subcommittee of the House Committee on Merchant Marine and Fisheries which was studying the conference system, by the then first assistant, Antitrust Division of the Department of Justice, Robert Bicks, who stated:

It [the shipping industry] is absolutely the only area in our economy where Congress has delegated to a private group the power to set rates without any Government regulation (id. at 184).

Where independent competition has operated in foreign trade routes of the United States, its effectiveness in controlling rate levels has not gone unobserved by shippers and consignees. Thus, when the independent service of the Baron

Line was plying the sealanes between the United States and South Africa, an official of Lykes Brothers, a regular line engaged in that trade, frankly reported to its New Orleans office:

There is no question but that various importers feel that Baron Line have been a helpful factor by driving down the freight rates on most of the heavy moving commodities. (Hearings, pt. 1, vol. 4, at 4252.)

American importers have complained of the unlimited power of steamship conferences to set rates in trades where nonconference operators are not available to temper the monopoly of the conference lines. Edward Bransten, chairman of the Steamship Committee of the Pacific Coast Coffee Association, which is an organization embracing 70 firms engaged in the importation of coffee on the Pacific Coast of the United States, testified on behalf of his organization before the House Antitrust Subcommittee in March 1961. Mr. Bransten pointed out that in each of the conferences which serve his group, a dual-rate system is employed and independent competition does not exist—hearings, part 3, volume I, at page 152. He described the impact of this as follows:—

Since there is nothing in the dual rate agreement or in the law to prevent them from doing so, and there is no non-conference competition, the conferences have increased our freight charges from time to time without proper consideration of our interests. These increases have had a very serious effect on the competitive position of the Pacific coast coffee industry. Although we have what the conferences call a rate agreement with them, we have no voice in preventing or controlling rate increases whenever the conferences desire to make them. Because the conference has a complete monopoly in our trades, we have no outside competition to which we can turn for assistance (hearings, pt. 3, vol. I, at 153).

Second, if nonconference operation were rendered impossible, due to the employment of exclusionary dual-rate systems or other predatory practices, a U.S.-flag carrier could not leave—or seriously threaten to leave—a conference, although the conference was taking action detrimental to the U.S.-flag carrier or to the foreign commerce of the United States. It is well-known that in most conferences, U.S.-flag lines are outnumbered by foreign-flag lines, who are thus able to dominate the conference.

On occasion, U.S.-flag carriers have utilized their present freedom to leave the conference in order to prevent or preclude activities which they deemed harmful to their interests. For example, American President Lines, a U.S.-flag line, attempted to stem the tide of rebating in a particular trade in which it was engaged by threatening to resign from the conference. On two occasions, American President Lines tendered its resignation but subsequently rescinded its notice of withdrawal because, in the words of one of its high officials, "our resignation prompted the other carriers in the trade to make renewed and a more strenuous effort to clean up some of these things in this particular trade"—hearings, part 2, volume I, at page 340.

It is evident to me that, if we are to have rates at reasonable levels and other

advantages to shippers, we must legislate so as to afford the opportunity to survive in fair competition to new carriers, those now in existence and to those who choose to withdraw from a conference. Absent Government review of rates, this is the only protection of rates. It is the only protection left in our foreign commerce. We know too well the history of cartels so far as price competition within the cartel is concerned.

OCEAN FREIGHT RATE LEVELS MAY ADVERSELY AFFECT FOREIGN COMMERCE OF UNITED STATES

Ocean freight rates set by the uncontrolled mechanism of conference rate fixing are potentially harmful to the foreign commerce of the United States. Rates set by this process have wide ramifications, not only with respect to the price the American consumer must ultimately pay for imported products, but also with regard to the volume of commerce exported from this country. If ocean freight rates from the United States to a given export market are too high as compared with rates from a country which is competing for sales to that market, U.S. export commerce will obviously suffer. In an era during which our efforts to sell our goods abroad will meet increasing competition from the Common Market and other sources, it is essential that ocean freight rates not discriminate against this country's waterborne export commerce. Indeed, in establishing a far-reaching promotional policy for the American merchant marine, Congress ought to aid and foster the foreign commerce of this country. It would therefore be anomalous and contrary to the interests of this Nation if the conference system to which our merchant marine generally adheres were to contribute to the atrophy of our trade with other nations. Yet, if steamship conferences are rendered so powerful that they may with safety ignore the interests of American exporters and shippers, there is a great danger that our foreign commerce will be adversely affected. To forestall this danger independent competition must be preserved as a practical check upon the otherwise unlimited power of conferences to fix rates and as an alternative for the shipper who can obtain no relief from the conference.

This is not a mere assumption by me. Testimony and documentary material in the record of the recent House hearings illustrate the dangers to our foreign commerce which may accrue from discriminatory rate levels and indicate that independent competition may provide a safeguard and check against these dangers. The record of the House Antitrust Subcommittee hearings contain vigorous appeals by or on behalf of exporters of major U.S. products. These appeals, directed to conferences and conference lines, stressed the need for reduction of ocean freight rates on the movement of these products to certain export markets in order to meet foreign competition and alleged that U.S. exports had been severely restricted as a result of freight rates set by conferences engaged in the foreign commerce of the United States—see hearings, part 1, volume V, at pages 4962-4967.

Take iron and steel, for example. In a letter, dated May 23, 1958, to Mr. Frank Slater, vice president of American Export Lines, a conference carrier; from Ore Navigation Co. of New York City, stated:

It is quite generally known in all trades that present iron and steel rates from U.S. ports are unreasonably excessive in view of today's freight market, general cargo rates from Europe and the decline of steel shipments from here.

Of all the problems confronting steel exporters today, the primary obstacle to the recapturing of diminished markets and booking cargo again with the berth operators from our ports is the extreme inequality of berth rates (hearings, pt. 1, vol. V, at 4928; the Senator may desire to read further from this letter).

American Export Line replied to this request, advising Ore Navigation that it was not in a position to reduce its rates so as to establish them on a parity with those quoted from the United Kingdom and the Continent to Portugal on the grounds that a reduction to that level would render the rates "noncompensatory"—hearings, part 1, volume V, at pages 4930-4931; the letter appears at 4931.

The disparity on rates was apparently quite marked. An American Export Line official told the Antitrust Subcommittee the rate on steel from the United Kingdom to the Mediterranean Basin was \$10 a ton while the rate from the United States to the Mediterranean Basin was \$30 per ton—hearings, part 1, volume V, at page 4932.

Asked to explain the reasons for this disparity, the official stated:

I am guessing when I give you the answer on this, because again I do not have the facts. But I would say that they are using continental or United Kingdom vessels which are very cheap to operate. I also know that there is a great deal of nonconference competition operating from that area, from the United Kingdom and Continent into the Mediterranean area. And I believe that competitive factors have driven the rates down to that level (id. at 4932).

The influence of freight rates on U.S. export trade was even more strikingly presented in evidence with respect to ocean freight rates on electrical appliances moving from the United States to Greece—hearings, part 1, volume V, at pages 4936-4953. Distributors of General Electric Co., Westinghouse, and Philco electrical appliances complained that freight rates on these products from U.S. ports to Greece were excessive as compared to rates from Continental ports and that this disparity in freight rates was sharply curtailing U.S. exports of these products to Greece.

In October 1957, a Mr. Reginos, the agent or distributor of International General Electric Co. products in Greece, advised International General Electric Co. concerning the impact of ocean freights upon the movement from the United States to Greece of electric ranges, electric fans, electric water-heaters, household appliances and fluorescent light fixtures—hearings, part 1, volume V, at page 4937.

As to the rate from the United States on electric ranges, Mr. Reginos made the following observations:

The freight rate on electric ranges to Piraeus is \$41 per 40 cubic feet. On the basis of this rate, an apartment size electric range of a value of about \$110 pays about \$22 ocean freight rate or about 20 percent of the f.a.s. value. A 30-inch range of a value of about \$122 pays about \$35 ocean freight rate or about 28 percent of the f.a.s. value.

In a subsequent letter, International General Electric Co. was informed that the freight rate on ranges shipped from Europe generally ran to about 8 percent of the free alongside ship value—hearings, part 1, volume V, at page 4948.

Mr. Riginos pointed out, that, partly as a result of these rates, during 1956 the equivalent of only about 150 ranges had been imported into Greece from the United States, while to his understanding, 10,000 ranges had been imported from Europe. He concluded:

By keeping the freight rates on electric ranges at \$41 per cubic foot nobody gains anything. A reduction of freight up to \$20 would be advisable. This will help to reduce the landed cost by about \$37 per range which will help increase the volume of business considerably (id. at 4940).

In a December 1957 letter to the North Atlantic/Mediterranean Conference, which covers the trade between the United States and Greece, the Philco distributor for Greece charged the conference with partial responsibility for loss of the market for U.S. ranges in Greece:

The last 3 years you increased three times your freight from New York to Piraeus with result that one of our articles, the electric range, be so charged, so that allow the German industry to gain the market and all shipments from United States to Greece stop. One glance at the 1957 figures will convince you that this is reality since not even 100 pieces totally came into Greece in this year from America as against the 13,000 pieces which have come from Germany. The high freight rate on electric ranges renders you too somewhat responsible for the result of the disappearance from the Greek market of this very important kind of article (hearings, pt. 1, vol. V, at pp. 4944-4945).

To return to Mr. Riginos, the General Electric distributor also protested that the rate on electric fans—\$63.25 per 40 cubic feet to Piraeus—were excessive:

During 1956 the total American shipments of fans to Greece amounted to \$16,000. We estimate that shipments of fans from the United States should be at least \$50,000 per year. Therefore, by keeping the rates high, nobody gains and particularly the American Industry (hearings, pt. 1, vol. V, at p. 4940).

A subsequent letter to International General Electric pointed out European fans paid ocean freight rates amounting to about 5 percent on the FAS value, and that "every small quantities of fans are imported from the United States due to high transportation expenses"—hearings, part 1 volume V, at page 4948.

As to household appliances—such as electric irons, vacuum cleaners, et cetera—Mr. Riginos asserted:

The freight of \$63.25 is tremendous. It should not be more than \$35. In 1956 there have been shipped to Greece from the United States: \$2,667 worth of vacuum cleaners only; \$4,622 worth of electric irons only; \$2,459 worth of mixers only; \$2,115 worth of table cooking appliances only (id. at pp. 4940-4941).

The distributors of Westinghouse products as well as the Philco and General Electric agents sought reductions on these items. When the conference delayed action on these requests, the Westinghouse distributor reminded American Export Lines that other alternatives were available—presumably he meant nonconference competition. In a letter dated May 1958, it stated:

We are afraid that the matter is dragged unnecessarily and regret to inform you that, although we have been very loyal to your line so far, we shall be compelled to consider certain attractive propositions from other lines which will help us to be more competitive (hearings, pt. 1, vol. V, at p. 4951).

Ultimately, the conference must have recognized the validity of the charges for on some of these items it reduced the rates. In a letter dated January 19, 1960, American Export Lines informed the Antitrust Subcommittee that the conference had made a reduction on the rate on electric ranges from \$41 per ton W/M to \$33.20—however, not the \$20 reduction sought by Mr. Riginos—and a reduction of the rate on electric fans from \$63.25 to \$33.25 per ton W/M. However, the rates on household appliances—\$63.25—washing machines, air conditioners, radios, and parts remained the same.

Thus, while rate reductions were belatedly made on some of these items, it appears that the reaction of the conference was sluggish and that, based on the correspondence from the Greek distributors, the market in a number of these items was lost before the conference acted. Thus, the need for non-conference competition as an alternative to conference shipment and as a factor working toward more reasonable rates would appear to be clearly demonstrated.

That shippers and exporters have found the availability of nonconference sailings useful in pressing their claims for rate reductions is further illustrated by the following letter addressed to the North Atlantic/Mediterranean Freight Conference from the American Metal Climax Co., of New York City, relating to copper from Genoa, Italy.

A set of letters indicating that a small American importer had lost business as a result of conference freight rates can also be found in the record of the hearings of the Senate Committee on Commerce on H.R. 6775.

The writer of the letter stated: "It was the cost of the ocean freight which rendered us uncompetitive", and continued:

This is called to your attention because here is a clear and concrete example of how the American exporter and in turn the United States, suffers because of unrealistic ocean freight rates—rates based upon what the traffic will bear and not upon competition and a fair and just profit.

These illustrations are sufficient to indicate how conference may discriminate against our foreign commerce and the need for independent carriers as a check on the conference carriers.

THE EFFECT OF THE DUAL RATE SYSTEM ON AMERICAN AGRICULTURE

In 1959 the United States exported, by water, a total of 35,992,660—computed

from Department of the Army, Corps of Engineers, "Waterborne Foreign Commerce of the United States," part 5, national summaries (1959)—net tons of agricultural products. This accounted for 32.08 percent of our total export waterborne trade. If coal, lignite, and coke are excluded, agricultural exports amounted to 48.06 percent of our total export waterborne commerce. Wheat waterborne exports alone were 10,727,744 net tons, or 9.56 percent of total waterborne exports.

Other major agricultural waterborne exports were:

	Net tons
Corn-----	6,068,265
Rice-----	763,549
Barley and rye-----	2,846,508
Oats-----	735,780
Wheat flour and semolina-----	1,384,101
Grain sorghums-----	2,877,380
Animal feeds (fodder and feeds)---	1,007,272
Edible vegetable oils and fats----	349,386
Soybeans-----	3,646,900
Flaxseed-----	250,823
Inedible and/or crude vegetable oils, fats, and waxes-----	418,296
Unmanufactured cotton-----	1,304,075
Unmanufactured tobacco-----	271,323

Thus, American agriculture is vitally dependent on ocean shipping and American export trade is vitally dependent on American agriculture.

Agricultural interests are particularly vulnerable to the dual rate system, as was pointed out by the Department of Agriculture, in its brief in the U.S. Court of Appeals for the District of Columbia, attacking a particular dual rate system in the brief, under a heading entitled "Interest of the Secretary of Agriculture," contains the following:

The Secretary of Agriculture intervened in this case (1) to represent the interests of the agricultural community in obtaining equitable transportation rates and services for shipments of agricultural products, and (2) to represent the Department of Agriculture's direct interest as a large shipper of agricultural commodities.

The issue as to the validity of the dual rate system is of basic and widespread importance with respect to the transportation of agricultural products. For example, approximately 27 million tons of agricultural products were exported by ocean carriers in 1951. It is important to the agricultural industries and to the Department of Agriculture that shipping rates be competitive and reasonable so as to encourage and favor the exportation of American agricultural products. If the conference lines can coerce shippers into discontinuing to patronize the nonconference lines, and economic freedom of bargaining of shippers becomes a nullity—having no place else to go, the shippers must accept conference rates.

With a complete monopoly of the trade, the conference lines would have the economic power to charge much higher rates than would be possible with the check of independent competition. The recourse of appealing excessively high rates to the Maritime Board, which may disapprove the conference agreements, is not an adequate remedy for shippers. Such recourse would probably involve extended hearings as to the excessiveness of the rates and require the hiring of counsel to present the shipper's case.¹ It could not be as effective in curb-

¹ The Alexander Committee recognized, on p. 306 of its report (H.R. Doc. No. 805, 63d Cong., 2d sess., 1941), that: conference lines, through their monopolistic powers, so completely dominate the shippers with

ing excessive rates as independent competition.

The position of the Secretary is that shippers of agricultural products should be free to bargain with both the conference and nonconference lines and thereby obtain the cheapest rates available—and obtain them without being penalized for patronizing the nonconference lines. Congress, in enacting the Shipping Act, 1916, did not intend to sanction the destruction of free competition in ocean shipping, but sought rather to guarantee to shippers both the economic freedom of bargaining and the right of equal treatment.

It should also be remembered that the Maritime Commission has no power over the reasonableness of rates in foreign commerce. It has sometimes been suggested that the Commission could disband a conference if it charged an excessive rate. However there is no direct legal authority for such action by the Commission, and this is reflected by the fact that in the entire history of the Shipping Act, since 1916, the Commission and its predecessor agencies have never revoked approval of any conference agreement because of an unreasonably high freight rate.

A further demonstration of the danger to agriculture of the uncontrolled dual rate system is found in the testimony of Mr. George A. Dice, Director, Special Services Division, Agricultural Marketing Service, U.S. Department of Agriculture, before the House Merchant Marine and Fisheries Committee on March 4, 1959—"Steamship Conference Study," pages 118-122—Mr. Dice stated:

Our objection to the dual rate system is quite simple. We believe it to be unduly discriminatory and prejudicial to the interests of agricultural shippers. Under the system two identical shipments from the same port, in the same vessel, stowed side by side in the same hold, moving to the same destination, and receiving exactly the same transportation service, are or may be charged for at different rates. Not only do we believe this practice to be unduly discriminatory and prejudicial against the interests of shippers but we believe it to be a form of retaliation against a shipper who does not desire to tie himself and his business to an exclusive patronage contract.

It is our view that the dual rate system and its coercive contractual arrangements tend to deprive shippers of agricultural commodities of the freedom of choice of transportation service. If practiced successfully, the system would result in a monopoly for the steamship conference lines. We say "if practiced successfully" because the elimination of competition from independent steamship lines appears to be the objective of the dual rate system.

The Department is agent for the International Cooperation Administration in the shipment of agricultural commodities. The Department, however, does not become a party to contractual arrangements of the sort followed under the dual-rate system, although, in instances, because of the nature of the programs involved, members of the

whom they deal that these shippers cannot afford, for fear of retaliation, to place themselves in a position of active antagonism to the lines by openly giving particulars of their grievances.

Shippers, on the contrary, live far apart and because of their different and frequently antagonistic interests can only combine for mutual protection with the greatest difficulty.

conferences do extend special rate consideration.

It is our opinion that if a dual-rate system is practiced and if it is successful in eliminating competition from independent lines, it could eliminate this rate consideration on special program shipments.

We believe that if, through the dual-rate system, a steamship conference gains a monopoly, rate increases might very well follow. Certainly the factor of competition would not be present to deter such instances. This would be extremely unfortunate both from the standpoint of agricultural shippers and exporters.

We believe that anyone who does not choose to bind himself to such a contract and who is thereby required to pay a higher rate than another shipper of the same commodity would be discriminated against.

We believe also that, if competition is eliminated through the operation of the system, that that militates against the best interest of agriculture.

Specifically, the dual-rate system when used as a predatory device affects American agricultural exports by eliminating independent liners from business, and a vast quantity of agricultural products go on liners. This includes so-called general cargo, that is, cargo in containers or handlers in separate units, such as canned fruits, vegetables, tobacco, cotton, and wheat flour in bags.

The following are a few examples which illustrate the size of the shipments of such cargoes on liners. In the first quarter of 1960 alone, under Public Law 480, we shipped, on liners, the following:

To Turkey:	Long tons
Wheat.....	29, 850
Soybean oil.....	14, 247
To India:	
Cotton.....	34, 696
Milled rice.....	39, 702
To Korea:	
Wheat flour.....	50, 960
Corn.....	9, 491

There is no rate regulation in our foreign commerce. This leaves American foreign commerce, including the vital interests of American agriculture without Government protection against monopolistic freight rates charged by ocean shipping cartels. Without Government protection, it is doubly important that the protection offered by independent competition be maintained. It is therefore essential that no dual rate legislation which would jeopardize this independent competition be enacted.

APPLICATION OF U.S. ANTITRUST LAWS TO FOREIGN COMMERCE

It is argued that it would be an unheard-of effrontery to try to regulate international commerce and place it under certain U.S. antitrust restrictions.

It is difficult for me to see the reasoning behind this argument in view of the historical application of our antitrust laws to foreign commerce. Going back to the famous case of *U.S. v. American Tobacco Company* (221 U.S. 106 (1911)), where the Supreme Court applied the Sherman Act to an agreement "executed in England" between an American company and its British competitor, we find a whole series of cases applying the Sherman Act to foreign companies engaged in international commerce. For example, in 1951 in the *Timken* case (341

U.S. 593), the Court held illegal an arrangement between American Timken and its foreign competitors. In that case, the Court said:

The fact that the cartel arrangements were made on foreign soil does not relieve defendant from responsibility. * * * [For] they had a direct and influencing effect on trade in tapered bearings between the United States and foreign countries. * * * [Clearly] defendant's territory was affected.

The Attorney General's National Committee To Study the Antitrust Laws points out:

Beyond these cases involving arrangements joined by American firms, the Sherman Act may cover certain acts by foreign combinations alone.

As an example, they cite *U.S. v. Alcoa* (148 F. 2d 416 (1945)). Although I have some reservations with respect to these totally foreign transactions, it is clear with respect to agreements involving Americans and foreigners. At page 76 of the report, the Celler committee states:

We feel that the Sherman Act applies only to those arrangements between Americans alone, or in concert with foreign firms, which have such substantial anticompetitive effects on this country's "trade or commerce with foreign nations" as to constitute unreasonable restraints. Where a U.S. court holds a contract between an American and foreign company illegal under our antitrust laws, and the foreign party attempts to enforce that contract under foreign law, U.S. agencies, including the State Department, should endeavor to protect the U.S. party.

I certainly am in accord with the conclusion of this eminent committee. Further, there is regulatory control of international air traffic by an American agency, the Civil Aeronautics Board. In fact, the CAB has the power to disapprove any rates involving the United States which it believes are unreasonable.

Certainly there are differences between international air traffic and international sea traffic. However, these differences do not go to the heart of the question of whether or not the United States should preclude itself from any sort of effective regulation of anticompetitive arrangements simply because they involve foreign companies. I see no reason whatever that foreign shipping companies should be any more exempt from some U.S. antitrust control, when they engage in the foreign commerce of the United States, than any other foreign corporation, be it a manufacturer, a shipping concern, or an airline.

SUBSIDIES

There may be some confusion among my colleagues as to the impact of Federal subsidiaries to American carriers on the matters we are discussing today. Let me attempt to clarify the subsidy question.

There are two types of subsidies given to carriers: operating and construction. It is the operating subsidy with which we are concerned. This subsidy, briefly stated, puts an American carrier on a parity, with respect to costs, with its lowest cost competitor. It compensates American carriers for high wage, subsistence, repair, and insurance costs. In other words, a subsidized American car-

rier is reimbursed by the Federal Government for the difference between his operating costs and those of his lowest cost competitor, for example, Japanese carriers. This means that the American carrier can not only compete on a parity with his most efficient competitor, but in addition, has a competitive advantage over all his foreign and unsubsidized domestic competitors, whose costs are higher than those of the lowest cost, foreign carrier, to which the subsidy is pegged.

I cannot stress too strongly that the subsidy to a carrier is not determined by his rate or his success as a competitor. It is designed merely to get him started—costwise—on an equal footing with foreign lines, which have the advantage of cheap labor. What he does beyond this, is determined solely on the basis of his skill in his business operations. As one of the witnesses before the Bonner committee testified:

[T]he operating subsidy is intended to enable the American operator to take care of himself in any situation that develops in foreign trade (Mr. Stakem, at p. 42).

WHY AMENDMENTS ARE ESSENTIAL

Basically, a cartel is a monopoly device. Looking at the shipping industry and weighing things in the balance, there is probably no justification for cartels and their dual rate system when the interests of the conference cartels are weighed in the balance with the impact of such agreements upon American shippers and independent carriers, and the generally restrictive effect of such agreements on the foreign commerce of the United States. But if the Congress of the United States, in its wisdom, views the matter differently, then the least that should be done is to surround these all-embracing cartel systems and dual rate contracts with adequate safeguards. This, I regret to say, the present law, as reported by the Senate Commerce Committee, fails to do.

Let me emphasize that I mean no criticism of the distinguished gentleman in charge of the bill. Indeed, there are some very excellent provisions in the bill for which I wish to commend the committee earnestly. For instance, section 8 of the bill is a landmark provision. It would allow the Governors of the several States to file a protest over discriminatory rates in our foreign commerce with the Maritime Commission. Within 120 days thereafter, the Commission must act on the complaint and either find the rate nondiscriminatory or set it aside. This is indeed a forward-looking section. For the first time in history the Commission would be expressly granted actual supervisory jurisdiction over rates in our foreign commerce. I hope the Senators will insist in conference that this provision remain as it is the type of safeguard that is absolutely necessary to protect our commerce against the international cartels that are legalized by the Shipping Act. I also hope, in view of the vast authority over rates conferred by this section, that there will be little objection to amendments along the same line that I shall propose.

However, with a few exceptions, which do not relate directly to dual-rate contracts, we find the bill before the Sen-

ate as reported by the committee virtually stripped of adequate protections for the foreign commerce of the United States, independent lines, shippers, and ports. I realize this is a rather broad indictment so I should like to outline briefly the respects in which the Senate bill would denude the law of essential protections.

First. The bill rejects the antitrust safeguards of the House bill.

The House bill had three provisions which, if I may summarize, would prevent the Commission from granting permission for any dual-rate contract which is not intended or reasonably likely to exclude any carrier from the trade. The purpose of these safeguards was manifold:

(a) They would keep the sealanes of the United States open to all vessels in conformity with traditional concepts of freedom of the seas.

(b) They would assure that American lines could, with safety, resign from conferences if necessary to protect the foreign commerce of the United States and at the same time have access to cargo.

(c) They would assure that no American line would be forced into a conference without its consent.

(d) They would safeguard the business of tramp vessels which form an essential part of the American merchant marine.

(e) They would protect American shippers against excessive rates charged by steamship conferences having a monopoly in the trade, by assuring the existence of independent competition.

Why were these salutary safeguards eliminated by the Senate Commerce Committee when they appeared in a bill that was unanimously passed by the House after 3 years of study by two congressional committees? The Senate report—No. 860—declares that they were eliminated because every effective dual-rate contract is intended and reasonably likely to exclude independent competition, and therefore no dual-rate contracts could ever be permitted under the law. This simply is not the case.

The committee report relies to a large extent on the statement of former chairman of the Federal Maritime Board, Clarence B. Morse, that such was the intent and effect of every dual-rate agreement. But as a matter of fact, this opinion of Chairman Morse was a minority opinion, as reflected by decisions of the Board itself. In *Contract Rates-Trans Pacific Freight Conf. of Japan* (4 F.M.B. 744 (1955)), for example, the Board disapproved a dual rate agreement in the Japan-Pacific trade because it found the malpractices in the trade due, not to the carryings of Isbrandtsen, but to over-tonnaging. In his dissenting opinion, Chairman Morse declared that the purpose of a dual-rate agreement was "the elimination of nonconference competition, as such, as a significant force in that trade"—4 F.M.B. at 768. He went on to say further:

To test the validity of a dual-rate system by its effect on independent operators is to permit the tail to wag the dog. (4 F.M.B. at 769).

But the Board failed to agree with him in this case and has consistently con-

sidered the impact on independents in determining the legality of dual-rate agreements.

Now, the conferences know that the Board has consistently adhered to the position that no dual-rate agreement will be approved if it tends to eliminate an independent from the trade. They were so informed by the Board in 1957, by Mr. Aptaker, of the General Counsel's Office in no uncertain terms, according to a conference memorandum on their discussions with him which reads in part as follows:

Since that decision, the Board has extended these fallacious principles to other conferences. Mr. Aptaker stated that the Board would no longer approve any contract rate system where there was not a firm showing of existing nonconference competition, and further, that such nonconference competition is making undue inroads in the trade. He further advised that the Board would not approve any contract rate system which denies to nonconference operators a fair and equitable share of traffic; nor approve a contract rate system which prevents shippers from exercising a choice between conference and nonconference vessels. These standards stem directly from representations made to the Board by the Japan-Atlantic and Gulf Freight Conference in docket No. 730. Sponsors of the brief amicus curiae copy the same representations (Celler committee hearings, pt. 3, vol. II, at 987).

The committee report also quotes conference leaders in support of the conclusion that no dual-rate agreement would be approved under the bill with the anti-trust safeguards of the Bonner bill included because all dual-rate agreements would tend to drive carriers from the trades. I would like to quote, however, from the examination of Mr. J. A. Dennean, chairman of the very important Far East conference—with 23 lines—when he appeared before the Celler committee this spring, which is directly contrary to the Senate Commerce Committee's findings.

Mr. SINGMAN. Well, just let me put it simply and ask you whether you agree that the purpose of the contract rate system is to prevent shippers from patronizing nonconference lines?

Mr. DENNEAN. No, sir; I do not, and I want to tell you this, that there are a lot of things in that memorandum I disagreed with as you read it to me, but there is one thing that I don't agree with, and that is our system, our contract system, is devised with the idea of preventing the operation of nonconference lines.

Now, bear this in mind, please, that in the Far East trade we have had a contract system for 30 years. I think it is about that length of time.

Now, we have never deprived an outside line from operating. We have always had outside competition. So I don't think that is the purpose of our system at all.

Mr. SINGMAN. It may be that it doesn't work, but the question is, What is the purpose of it?

Mr. DENNEAN. Well, I don't think that is the purpose of it at all.

Mr. SINGMAN. What is the purpose?

Mr. DENNEAN. I think the purpose of it is to assure as much cargo as possible to the members of the conference, the regular lines operating in the trade.

Now, if that is 100 percent; fine. We would like to get 100 percent. But I want to tell you right now that in my judgment there is no contract system which will ever operate to that extent.

If you get 80 percent of the cargo, you are operating at 100 percent efficiency, because you cannot put everything under contract; shippers will not contract with you, some shippers will not contract with you.

So those are some of my opinions on this subject.

Mr. SINGMAN. Your objective is to, in effect, secure a monopoly—

Mr. DENNEAN. No, sir.

Mr. SINGMAN (continuing). Through the rate system.

Mr. DENNEAN. No, sir. There cannot be a monopoly. Even if we had gotten completely all of the cargo in the trade, I still don't think that is a monopoly. You might think so, but I don't, because we have 23 members in the conference and all are fighting to get cargo.

(At this point in the proceedings, Mr. Donohue is presiding.)

Mr. SINGMAN. Yes. But somebody who is not a member, doesn't join your club, can't operate, though; isn't that correct?

Mr. DENNEAN. Yes, but he can join if he wants to.

Mr. SINGMAN. But if he doesn't want to, he is out of luck?

Mr. DENNEAN. Well, not in our trade. That hasn't been the case at all (Celler committee hearings, pt. 3, vol. II, at pp. 974-975).

I suggest, then, that there is absolutely nothing illusory about the antitrust safeguards prohibiting dual-rate contracts intended to eliminate independent carriers from the trade. Certainly the test is much less rigid than the Supreme Court test in the Isbrandtsen case where the Court found the agreement unlawful merely because it was taken as a competitive measure to offset the competition of Isbrandtsen. And as a matter of fact, in that very case, the Board, which had approved the agreement in question in the Japan-Atlantic trade, expressly found that notwithstanding the dual-rate agreement "the continued existence of Isbrandtsen as an effective competitor and the existence of strong shipper groups insure conference consideration of shipper needs and desires—contract rates, *Japan-Atlantic-Gulf Freight Conf.* (4 F.M.B. 706, 741 (1955)). All those in support of the antitrust safeguards are asking is assurance that the standards laid down by the Commission prior to the Isbrandtsen decision will be adhered to in the future notwithstanding the fact that dual-rate agreements generally will be legislatively authorized.

The committee suggests that by advocating these amendments we are supporting only foreign lines. They refer to the fact that Isbrandtsen, the only American nonconference line, will soon join the conferences. In the first place, the illustration is inapt because, if anything, Isbrandtsen is being forced into the conference by the Maritime Administration which refused to give a subsidy to Isbrandtsen unless it promised to abide by the conference tariffs, rules, and regulations. This is documented, chapter and verse, by the following correspondence:

DECEMBER 30, 1960.

Rear Adm. RALPH E. WILSON,
Chairman, Federal Maritime Board,
Washington, D.C.

DEAR ADMIRAL WILSON: We acknowledge receipt of your letter of December 23, 1960, replying to our letter of December 13, 1960, relating to maintenance of conference rates. In the light of your letter we have reviewed our position and submit the following which

we believe to be in accordance with your requirements.

We hereby agree, if subsidized, to participate in conferences on the same basis as other subsidized operators in all the areas in which we will operate subsidized services. Naturally we will, on our part, comply with the rates, rules, and regulations of all conferences of which we are members, and we shall make every effort to see that the conferences in which we participate operate effectively and to see that those conferences provide adequate machinery to enforce compliance by all conference members with conference rates, rules, and regulations.

There is no reservation whatsoever as to our commitment on this matter. We do believe that we should have the same right as other subsidized operators now have to withdraw from a conference where special circumstances warrant, or where such special circumstances exist, to refuse to join a conference that does not cover a substantial portion of the trade or is otherwise ineffective. We wish to assure you, however, that even those actions would be taken only after this matter had been discussed with the Maritime Board.

In any areas where conferences do not exist we will use our best efforts to work toward stabilization of rates and conditions.

We are advised that American Export intends to continue to follow the policy on conference matters that it has followed in the past and that it concurs in the position that we have now taken, as set forth above.

As we feel that the position which we present here is in harmony with the policies and practices of the other 14 American-flag subsidized lines, we hope that you will agree that there is no need to impose exceptional conditions or restrictions on the two lines here involved.

Sincerely yours,

ISBRANDTSEN CO., INC.,
JAKOB ISBRANDTSEN,
President.

FEDERAL MARITIME BOARD,
Washington, D.C., December 23, 1960.

Mr. JAKOB ISBRANDTSEN,
President, Isbrandtsen Co., Inc.,
New York, N.Y.

DEAR SIR: This will acknowledge the receipt of your letter of December 13, 1960, in which you set forth your position with respect to the maintenance of conference rates by American Export Lines, Inc., as well as Isbrandtsen Steamship Co., Inc. The position expressed in your letter is not acceptable.

The views expressed are substantially repetitions of statements made by officials of your company for many years prior to the time that you became affiliated with a subsidized operator. They convey nothing whatever of which the Board is not already aware, nor do they serve any useful purpose insofar as the problem at hand is concerned; viz, the award of an operating differential subsidy agreement to Isbrandtsen Steamship Co., Inc., and to the future operation of American Export Lines, Inc.

After careful consideration of this matter, the Board has determined that, in the event it should award a subsidy agreement to Isbrandtsen Steamship Co., Inc., it will require that such agreement contain a provision to the effect that the operator agrees to maintain conference rates, rules, and regulations effective for the subsidized services contained in such agreement, irrespective of whether the operator is a member of such conference, unless, due to special circumstances, the Board, in its sole discretion, should decide to modify temporarily this requirement as to a particular conference. Furthermore, the Board will require that an addendum to American Export Lines' subsidy agreement be executed which will contain this provision.

We shall appreciate your early reply and acceptance of the above condition in order that we may proceed with the processing of the subsidy application.

Very truly yours,

RALPH E. WILSON,
Chairman.

But Isbrandtsen aside, what about the trade routes where American conference operators have, for one reason or another, failed to join a conference, such as those shown in the following list, which are simply illustrative:

LIST OF TRADE ROUTES IN WHICH STATES MARINE LINES OPERATE WHERE THEY ARE NOT MEMBERS OF THE CONFERENCE ON THAT ROUTE

U.S. ports—Outbound: U.S. Atlantic ports to United Kingdom/European Atlantic ports.

U.S. ports—Inbound: United Kingdom and European Atlantic ports to U.S. Atlantic-Gulf-Pacific ports.

Mediterranean ports to U.S. North Atlantic ports (Celler committee hearings, pt. 1, vol. III, at 2777).

The trades in which American President Lines carries cargo where there are conferences of which American President Lines is not a member are as follows:

1. Pacific Coast/European.
2. Japan/Saigon.
3. Mediterranean/Orient.

(Celler committee hearings, pt. 2, vol. I, at 821).

Would the committee have dual-rate systems employed to drive them out of business? Or suppose an American line wishes to withdraw from a conference. Would the committee have the dual-rate contract employed to eliminate it from the trade? Moreover, what about the American tramp vessels which, latest studies show, compete in large measure for a good deal of cargo with conference lines, including liner type cargo. Would the committee want these essential elements of the American merchant marine driven out of business to appease the foreign dominated conferences employing dual rate contracts? I would hope the answer to all of these questions would be "No."

I am inserting in the RECORD at this point, a table showing these American operators and their vessels:

U.S. shipping companies owning tramp vessels operating in foreign trade—Number of freighters owned as of Jan. 1, 1959

Aeolian Steamship Corp.....	1
American Coal Shipping Co.....	1
American Union Transport Co.....	3
Arrow Steamship Co.....	1
American Waterways Corp.....	1
Atlantic Carriers, Inc.....	1
Atlantic Ocean Transport Co.....	1
Aspin Steamship Co.....	1
Blidberg Rothschild Co.....	1
Bulk Carriers Corp.....	1
Burbank, A. L. & Co.....	1
Cargo Ships & Tankers.....	2
Compass Steamship Corp.....	1
Effort Steamship Corp.....	1
Eastern Maritime Corp.....	1
DeLappe, W. A., Co.....	1
Dolphin Steamship Corp.....	1
Doric Shipping & Trading Co.....	1
Edison Steamship Corp.....	1
Elam Shipping Corp.....	1
Epiphany Tankers Corp.....	1
Falmouth Steamship Co.....	1
Grainfleet, Inc.....	1
Intercontinental Transport Co.....	2
Intercontinental Liberty, Inc.....	2

U.S. shipping companies owning tramp vessels operating in foreign trade—Number of freighters owned as of Jan. 1, 1959—Continued

Liberty Navigation & Trading Co.....	2
Inter Ocean Steamship Co.....	1
Long, Quinn & Boylan, Inc.....	5
Marine Bulk Carriers.....	1
Herald Steamship Corp.....	1
Martis Steamship Corp.....	1
New England Industries, Inc.....	1
Ocean Transport Co.....	4
Ocean Freight & Brokerage Corp.....	1
Ocean Shipping, Inc.....	1
Ocean Clippers.....	2
Pacific Waterways Corp.....	1
Panagopule, Eugene.....	1
Pan Cargo Shipping Co.....	1
Pegor Steamship Co.....	1
Peninsular Navigation Co.....	2
Penntans Co.....	3
Pacific Navigation Corp.....	1
Pier Shipping Co., Inc.....	1
Ocean Tramp, Inc.....	1
Pacific Wind Corp.....	1
Rockland Steamship Corp.....	1
Shepard Steamship Corp.....	1
Standard Steamship Corp.....	2
Harry Sperling.....	1
Tak Shipping Co.....	1
Terrace Navigation Corp.....	1
Traders Steamship Corp.....	2
Trans Pacific Co.....	4
Transfuel Corp.....	1
Transport Utilities Co.....	2
Veritas Steamship Co., Inc.....	1
Victory Carriers.....	7
West Coast Steamship Co.....	3
Whitehead Steamship Corp.....	1
World Carriers, Inc.....	1
Total.....	92

(NOTE.—These 61 companies compose the nucleus of the tramp fleet. However, a number of these companies frequently charter their ships to liner companies, on extended charter hire, for operation in liner service.)

(Celler committee hearings, pt. 1, vol. I at p. 759.)

Second. The bill would overrule *Isbrandtsen Co. v. United States* (211 F. 2d 51 (D.C. Cir. 1954, certiorari denied 347 U.S. 990 (1954))) by allowing dual-rate agreements to go into effect without a hearing by the Commission.

In *Isbrandtsen v. United States* (211 F. 2d 51, certiorari denied 347 U.S. 990 (1954)), the court of appeals for the District of Columbia held that a dual-rate agreement could not be lawful until it had received the express approval of the Federal Maritime Commission—Board—after hearing. Under the bill as reported, approval of dual-rate systems is no longer required on the part of the Commission. Instead, the Commission is to confer its "permission" on such agreements. It is not clear to what extent "permission" under new section 14b—applicable to dual-rate contracts—differs from "approval" under section 15—formerly applicable both to dual-rate contracts and to all other agreements—however, it is clear that "permission" "shall" be given after "notice" under section 14b, whereas "approval" may be given only after "notice and hearing" under section 15. Thus a safeguard formerly applicable to dual-rate agreements—namely, a formal hearing—is now stricken from the law and dual-rate contracts are not only made lawful but are the beneficiaries of special and preferred procedures which

differ from that accorded every type of other agreement under the Shipping Act.

Third. The bill does not make unlawful execution and enforcement of an unpermitted dual rate agreement, contrary to the holding of *Isbrandtsen Co. v. United States* (211 F. 2d 51 (D.C. Cir. 1954), certiorari denied 347 U.S. 990 (1954)).

In *Isbrandtsen* again *United States*, supra, the court of appeals of the District of Columbia made it explicitly clear that a dual-rate contract put into effect without the express approval of the Federal Maritime Commission—Board—was illegal; the court in that case said:

In either case, section 15 requires that such agreements or modifications "shall be lawful only when and as long as approved" by the Board. Until such approval is obtained, the Shipping Act makes it illegal to institute the dual-rate system.

The holding in this important decision was cited with approval and followed in a long line of cases including: *Pacific Westbound Conference v. Leval & Co.* (201 Ore. 390, 269 P. 2d 541 (1954), certiorari denied, 348 U.S. 897 (1954)); *River Plate & Brazil Conferences v. Pressed Steel Car Co.* (124 F. Supp. (S.D.N.Y. 1954), affirmed, 227 F. 2d 60 (2d Cir. 1955)); *Anglo Canadian Shipping Co. v. United States* (264 F. 2d 405, 411 (9th Cir. 1959)).

Now the language in quotation marks, supra, relied on by the court in the *Isbrandtsen* case for requiring Board approval of dual-rate contracts and for making such contracts unlawful until approved has been omitted from section 14b of the bill. In other words, under section 14b, it apparently is not unlawful under the Shipping Act to carry out a dual-rate agreement before permission has been obtained from the Board, or for that matter, even to carry out an unpermitted dual-rate contract. I might ask the gentlemen who sponsor this legislation why all other agreements in our foreign commerce are made unlawful by the act until Board approval is obtained, but dual-rate contracts are not subject to this prohibition. Again, we see another of the safeguards of the law whittled away by the Senate bill.

Fourth. The bill would eliminate all fines and penalties under the Shipping Act for carrying out dual-rate agreements in violation of the act.

As I have pointed out above, under *Isbrandtsen Co. v. United States* (211 F. 2d 51 (D.C. Cir. 1954), certiorari denied, 347 U.S. 990 (1954)), it was unlawful under section 15 of the Shipping Act to carry out an unapproved dual-rate agreement. Any conference line employing an unapproved agreement was therefore subject to heavy fines inasmuch as section 15 formerly provided:

Whoever violates any provision of this section shall be liable to a penalty of \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

However, under section 14b of the Senate version of the dual-rate bill, there is absolutely no penalty provided for employing a dual rate agreement in violation of the provisions of that section.

The \$1,000 per day penalty in section 15—which is now amended to provide for not more than \$1,000—would no longer appear applicable because it is limited to violations of section 15 only. It is also doubtful whether the penalty contained in section 32 could be invoked. That section states:

That whoever violates any provision of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor punishable by a fine not to exceed \$5,000.

However, there is no declaration in section 14b that the carrying out of an unpermitted agreement or an agreement in violation of the section is in any way unlawful, and it could therefore well be argued that such action in no way "violates any provision" of the act.

Once again are the safeguards eroded by the Senate bill. Under the old law, a dual-rate agreement carried into effect without the approval of the Board subjected the conference or lines to heavy penalties of \$1,000 per day; under the Senate bill, this deterrent, for no reason at all, is wiped out.

Fifth. The bill would permit the use of heretofore unlawful discriminatory practices to injure independent competition.

The very first section of the Senate version of H.R. 6775 would add a new word "unjustly" to the terms of the Shipping Act as they have existed for nearly half a century. The reason given for this novel addition is that it will thereby "conform that section to all other portions of the Shipping Act, 1916"—Senate Report No. 860, 87th Congress, 1st session, page 11. The point is, the framers of the Shipping Act of 1916 made section 14 different from all of the other sections of the act referred to by the committee, and for very good reason. As the Supreme Court of the United States pointed out in the *Isbrandtsen* decision (357 U.S. 481, 494 (1958)):

The characterizations "unjustly discriminatory" and "unjustly prejudicial" found in other sections imply a congressional intent to allow some latitude in practices dealt with by those sections.

In section 14, however, the intent of Congress has been to eliminate all discriminatory measures against independents.

By making lawful dual-rate contracts, which, because of their rate spreads and tying provisions, are prima facie discriminatory, the bill would remove a single type of discriminatory device from the all-exclusive terms of this section of the law. But this amendment, injected by the committee into the House bill, would not only remove dual-rate contracts from section 14, Third, of the Shipping Act, but every other type of discriminatory arrangement which the conferences and their counsel can contrive, unless such devices are found to be "unjustly" discriminatory, whatever that may mean.

To take a single illustration, on June 27, 1961, in docket No. 908, Japan-Atlantic and Gulf Freight Conference—Fidelity Commission System, the hearing examiner of the Commission approved a proposed Fidelity Commission

System—which is a hybrid between a rebate and a deferred rebate—on the grounds that it was not a “discriminatory” measure within the meaning of section 14, third. I hope this determination by the examiner will be reversed by the new Commission. But it will be all but impossible to reverse it if Congress now softens section 14, third of the act by the insertion of the word “unjustly.” For if the examiner did not think that this fidelity commission system discriminated in the first place, a fortiori, it stands to reason that it would probably not unjustly discriminate, either.

Now, there has been little if any testimony taken regarding the use of Fidelity Commission Systems by the Congress, or of the myriad of other types of tying devices that ingenious counsel for the conferences would contrive to avoid the strictures of the act. But it is clear that inserting the word “unjustly” into the act opens up a Pandora’s box of potential evils which the committees, not to mention Congress, have not even considered.

Once again, the Senate version drops the barriers of the Shipping Act in favor of the foreign-dominated conference lines.

Or take as another illustration, the provision in dual-rate agreements requiring nonnatural routing of cargo through nontributary ports. The Bonner bill endeavored to prevent this discriminatory practice by requiring that all dual rate contracts contain a provision that they do not require the contract shipper “to divert shipment of goods from natural routings not served by the conference. This was eliminated from the Senate version of the bill on the ground that the Commission already has ample power to prevent dual-rate carriers and conferences from doing that sort of thing, citing Gulf and South Atlantic Havana Conference, docket Nos. 849, 851, and 854, decided February 2, 1961.

Now, one of the grounds of the Commission’s decision in that case was section 14, third, prohibiting all—not merely unjustly discriminatory—measures against independents. The Commission cited with approval the following language of the Supreme Court in the *Isbrandtsen* decision:

The Congress in section 14 has flatly prohibited practices of conferences which have the purpose and effect of stifling the competition of independent carriers (356 U.S. at 491).

But, if the committee strikes the safeguard in the Bonner bill against unnatural routings and at the same time removes perhaps the most important elements of the Board’s authority to declare unlawful unnatural routings by inserting the word “unjustly” into section 14, third, our commerce may well be at the mercy of the routing restrictions of conference carriers despite the good intentions of the committee.

Once more, it is obvious that in deference to the conference carriers, the Shipping Act has been significantly weakened by the Senate version of the bill.

Mr. President, I have spoken at some length; this is a complicated subject. I hope that I have demonstrated the evils of an unregulated dual-rate conference system. The malpractices of the past are certainly blatant enough to justify restoration of the competitive safeguards built into the House version of H.R. 6775. I have introduced and shall call up amendments to accomplish this purpose. I hope the managers of the bill will find some of these printed amendments acceptable to them.

Mr. WILEY. Mr. President, the Senate has before it today H.R. 6775 as amended by the Senate Commerce Committee. The senior Senator from Tennessee has already called attention to several antitrust and monopoly matters involved in this bill and in the dual rate which it recognizes. I would like to deal with another aspect of this legislation—its impact on American exports.

Probably the most important international economic problem confronting our country today, is the relative decline of American exports, coupled with rapidly dwindling gold reserves and an unfavorable balance of payments. I have long stressed the need to continuously promote our exports—I have called for studies of the world markets; I have requested studies of our tariff structure; I have asked our industries to be more keen to the needs of world trade.

However, in assessing our ability to compete with other countries we must take into account many factors which cannot be easily modified, among which the most prominent is the high cost of labor in this country. Yet, in recent days there has come to my attention one factor which I am unable to fully explain—and this is the extremely heavy burden put on our exports by the international shipping rates.

We, in this country, are accustomed to the idea that each part of a round-trip ticket costs the same. But this apparently is not the case in ocean shipping. There one gets as much as the traffic will bear.

I am deeply concerned about this disparity in shipping rates between what is charged to American exporters, on the one hand, and what is charged to foreign exporters of the same products, on the other hand.

I have discovered, for example, that American cheese producers must pay twice as much to ship their cheeses to Genoa, as the Genoese shipper has to pay to send his cheese to this country. The dairy industry is, needless to say, a source of great interest and concern to me. I am at a loss to understand what possible justification can be made for this unwarranted discrimination against American farmers, producers, and shippers.

The international shipping rates are established by various shipping conferences, to which this bill, H.R. 6775, relates. These conferences file their rates with our Maritime Commission. Ship lines have been long permitted to band together and agree on rates because it has been thought that unrestrained competition would be disastrous to ocean carriers. Shipping conferences, as

pointed out by the Senate Commerce Committee, are obviously organized “for the purpose of reducing the rigors of competition which otherwise would exist.”

I am no expert on the ocean-shipping industry, but I am afraid that in this case the shipping conferences have taken advantage of the American manufacturer and shipper. I have always felt that a little fair, honest competition never hurt anyone.

Certainly, I agree it is important to protect the American shipping industry. But, at the same time, it is clearly equally important to protect the interest of all other American industries. Among other things, this means assuring that American farmers and manufacturers are able to ship their produce in international trade on a parity with foreign competition.

But this is not the case. Why is it, Mr. President, that a Wisconsin exporter, shipping his cheese products from Milwaukee to Marseille has to pay \$6.38 per hundredweight, while the French shipper of the same product to Milwaukee has to pay \$3.84? As my appendix reveals, this discrimination is not directed against the dairy farmers only. It is shown that similar injustices are worked against other American industries which vitally touch and concern the economic welfare of nearly every State in the Union. Among these industries are electrical products, steel, glass, and ceramic tile.

The second of my appendixes, containing excerpts from a memorandum prepared by the U.S. Department of Commerce in November 1960, shows the further impact of shipping rates on other industries. It reveals this same sort of discrimination against American producers attempting to compete with foreign manufacturers in such articles as automobiles, farm machinery, industrial chemicals, rubber, fertilizer, and many other crucial products.

We certainly want to protect American shipping. Yet, at the same time, it is important that we make certain that these shipping conferences do not let their power go to their heads. It is important also to note that many of these shipping conferences, which establish these shipping rates, are largely dominated by foreign lines. It is imperative that we do not give these shipping conferences so much power that they are completely protected in their efforts to enforce this handicap on American industry.

I understand full well, Mr. President, that there may be perfectly good reasons for protecting steamship conferences from destructive competition in every way possible; but, in balancing the needs of our national economy, we must observe that the past record of these conferences shows that exorbitant and uncompetitive shipping rates have been charged by these conferences to American shippers. This we must take into account in making our decision as to whether or not these conferences ought to be granted unfettered authority to set their own rates by common agreement.

The version of H.R. 6775 approved by the Senate Commerce Committee gives great power to shipping conferences. The decisions of these conferences, reached under this power, will have far-reaching impact on America's exports, gold reserves and balance of payments. Have these shipping conferences—most of which are controlled by foreign carriers—earned this trust by virtue of their past performance? In view of the facts which I have put before you, I have grave doubts whether the power of these conferences should be strengthened. I must, therefore, go along with the amendments to H.R. 6775 prepared by the senior Senator from Tennessee, which will restore this bill to the language which it had when it was voted upon in the House.

I must stress that this is not sufficient action, in my own mind. I feel it is important that further action be taken by the Government of this country to remedy the situation as it now exists. We

must make certain that our farmers, manufacturers and exporters are given an equal opportunity in the quest for world markets.

I ask unanimous consent to have printed in the RECORD the appendixes to which I have referred.

There being no objection, the Appendixes were ordered to be printed in the RECORD, as follows:

APPENDIX A

(Statement by Senator WILEY on the impact of shipping conference cartels on American exports)

The following materials are self-explanatory. You will note that there is a gross discrimination against American exports, in that freight rates for the same item over the same distance are much higher with respect to exports than imports. It is suggested that the impact of the situation revealed by these statistics on American exports, American industry, and America's gold balance be kept in mind in considering the dual-rate shipping bill, H.R. 6775.

Current shipping rates in the North Atlantic (United States-Japan trade)

	Outbound ¹	Inbound ²
Electric motors.....	\$54 per short ton (lower rate).....	\$39.50 per short ton.
Stainless steel (bars, billets, pipe, plates, rods, shapes, sheets, slabs, ships, tubes, wire).....	\$61.25 per long ton (lower rate).....	\$33 per long ton.
Glass plate and plate glass.....	\$42.25 per short ton (lower rate).....	\$28 per short ton.
Ceramic tile.....	\$65.25 per short ton (lower rate).....	\$27.75 per short ton.
Electric bulbs and photo flashbulbs.....	\$63.50 per short ton (lower rate).....	\$32.50 per short ton.

¹ Far East Conference; has dual-rate contracts.

² Japan-Atlantic and Gulf Freight Conference; has no dual-rate contracts.

Source: Tariffs filed by respective conferences with Federal Maritime Board.

CURRENT SHIPPING RATES ON ELECTRIC MOTORS IN THE GREAT LAKES—BORDEAUX-HAMBURG RANGE TRADE

Outbound (U.S. Great Lakes—Bordeaux-Hamburg Range Eastbound Conference):

Chicago, Milwaukee, Detroit, Toledo, and Cleveland to Bremen and Hamburg (per long ton)..... \$74.25

Inbound (U.S. Great Lakes—Bordeaux/Hamburg Range Westbound Conference):

Per 1,000 kilos ¹

Bremen and Hamburg to Detroit.....	\$48.50
Bremen and Hamburg to Chicago.....	49.00
Bremen and Hamburg to Toledo and Cleveland.....	48.00

¹ 1,000 kilos=2204.6 pounds. Long tons=2240 pounds. Therefore, the inbound figures should be increased, by approximately 1.5 percent to make them precisely comparable to the outbound figures.

Source: Tariffs filed by respective conferences with Federal Maritime Board.

COMPARISON OF CONFERENCE FREIGHT RATES ON CHEESE MOVING FROM UNITED STATES WITH RATES ON CHEESE MOVING TO UNITED STATES

Great Lakes ports of Chicago and Milwaukee—Mediterranean ports of Marseille, Genoa, Leghorn:

Per hundredweight on American exports..... \$6.38
Per hundredweight on imports..... 3.84

Source: Tariffs of American Great Lakes Mediterranean Eastbound Freight Conference and Mediterranean-U.S.A. Great Lakes Westbound Freight Conference on file with Federal Maritime Commission, September 8, 1961.

Great Lakes ports of Chicago and Milwaukee—Scandinavian ports:

Per hundredweight on American exports..... \$5.45
Per hundredweight on imports..... 2.74

Source: Tariffs of U.S. Great Lakes, Scandinavian and Baltic Eastbound Freight Conference and Scandinavia Baltic-Great Lakes Westbound Freight Conference on file with Federal Maritime Commission, September 8, 1961.

Great Lakes ports of Chicago and Milwaukee—ports of Bordeaux, Antwerp, Rotterdam, Amsterdam:

Per long ton on American exports (minimum ¹)..... \$110
Per long ton on imports (flat rate)..... 110

¹ Depending on density of cheese and manner of packing rate may be as much as almost twice this minimum rate.

Source: Tariffs of U.S. Great Lakes-Bordeaux-Hamburg Range Eastbound Conference and U.S. Great Lakes-Bordeaux/Hamburg Westbound Conference on file with Federal Maritime Commission, September 8, 1961.

(NOTE.—All rates cited above are for refrigerated space.)

APPENDIX B

(Statement by SENATOR WILEY on the impact of shipping conference cartels on American exports)

The following is an excerpt from a memorandum, dated November 3, 1960, prepared by the U.S. Department of Commerce, Bureau of Foreign Commerce, Office of Economic Affairs, Transportation and Utilities Division staff.

OCEAN FREIGHT RATES AS A DETERRENT TO THE EXPANSION OF U.S. EXPORT SALES

Since the early part of this year (1960), the Department of Commerce has been holding weekly meetings with representatives of various industries to discuss ways and means of increasing export sales in connection with our current export sales expansion program.

During several of these meetings industry spokesmen have pointed out that one of the principal deterrents to increased export sales is the high level of outbound ocean freight rates as compared with the inbound rates for the same commodity on the same trade route. Complaints have also been registered regarding the discrepancy between rates from U.S. ports to foreign destinations and from foreign ports to these same foreign destinations for the same commodity. Specifically, the following industries have provided the Department with statements regarding this matter: automotive equipment, industrial chemicals, major appliances, jewelry industry, electronics, rubber and rubber products, farm machinery, textile machinery, fertilizers, air conditioners, and refrigeration equipment.

Following is a synopsis of the statements presented by these industries:

AUTOMOTIVE INDUSTRY

The eastbound automobile rate level particularly to the continental-United Kingdom ports has been higher than the inward or westbound rate to U.S. ports, since 1945. After extended discussion with the AMA Ocean Rate Committee, the conference lines made a rate reduction in 1958 and another in 1959.

The impression exists that these concessions were prompted, however, by the then impending congressional investigation. Concern exists that as soon as the conference lines decide to boost the eastbound rates once again, this will be done, regardless of protest.

United Kingdom trade

	Boxed	Unboxed
Present eastbound conference rate, ¹ per 40-cubic-foot ton.....	\$23.00	\$26.00
Reported westbound rate, ² per 40 cubic feet.....	11.55	³ 16.45

¹ Rate applies to 8,960 pounds.

² Rate applies to 4,481 pounds.

³ 240 cubic feet or greater; \$12.60 per 40-cubic-foot units under 240 cubic feet.

Continental trade

	Present eastbound conference rate ¹		Reported westbound rate ² from Antwerp (per cubic meter, 35 feet)
	French-Belgium-Dutch ports (per 40-cubic-foot ton)	German ports (per 40-cubic-foot ton)	
Boxed.....	\$15	\$16.50	³ \$22.00
Unboxed....	18	20.00	14.30

¹ Rate applies to 8,960 pounds.

² Rate applies to 3,000 kilos (6,615 pounds).

³ To a value of \$2,000; \$33 per cubic meter if value over \$2,000.

INDUSTRIAL CHEMICALS

There is such great disparity between eastbound and westbound transatlantic freight costs as to make it impossible, in many cases, to effect eastward sales at all. A typical chemical commodity, which is sufficiently universal in application to make it worth using as an example, is sodium cyanide. To the best of our knowledge, this material comes to the United States from Germany, France, and the United King-

dom to the extent of some 18 million pounds, valued at about \$3 million per year. Movement eastward is, to all intents and purposes, nil, despite the fact the published going prices in the home market in all producing countries are roughly the same.

This one-way movement is explained more by the discrepancy in freights than by tariff differentials:

Per hundredweight

Hamburg to New York-----	\$0.82
Rotterdam to New York-----	.82
Liverpool to New York-----	.873
New York to Hamburg-----	6.61
New York to Rotterdam/Antwerp---	5.85
New York to Liverpool-----	(¹)
New Orleans to Antwerp-----	6.44

¹ Not yet available.

MAJOR APPLIANCES

At the August 17, 1960, meeting of the ocean rate committee, consumer products division, various members reported that they had been informed of your interest in the level of ocean rates of freight insofar as they affect unfavorably the exports of American products to world markets.

This committee holds that the disparity between American and European—and in some instances, Asian—ocean rates of freight is one of various important factors which have an adverse influence on the flow of a considerable number of American products to foreign markets. Electrical household appliances such as refrigerators, freezers, ranges, washing machines, dryers, and others are in this category.

The objectives of this ocean rate committee include continued negotiations with steamship conferences concerning rate levels which are detrimental to U.S. exports and, incidentally, harmful to the lines themselves, in the firm conviction that thereby a contribution will be made toward a rising volume of exports.

RUBBER

In many cases, ocean freight rates are the deciding factor as to whether U.S. producers can obtain the business. An industry representative stated that both United States and West German producers quoted prices on a substantial order for surgeons' gloves in Ecuador. U.S. prices were lower but ocean freight rates were so much higher that the landed cost from Germany was less than that for U.S. products, so that the business was placed with a German company.

FARM MACHINERY

Ocean freight rates handicap American exports. Some rates from the United States to Europe are considerably higher than rates from Europe to the United States. Some rates from Europe to a third country are lower than rates for the same distances on voyages originating in the United States.

TEXTILE MACHINERY

Marine freight rates are higher from U.S. ports to Europe than rates from Europe to the United States.

FERTILIZERS

Whereas ocean freight costs on potash to the Far East or Oceania are approximately the same from the United States as they are from Western Europe, it is a well known fact that it costs twice as much to ship potash across the ocean from the United States to Europe as it costs to ship the same product and quality in the opposite direction. For this reason European potash producers have long been able to secure a substantial part of our domestic market in the coastal strip from Maine to Florida. The opening of the St. Lawrence Seaway may for the first time give European potash suppliers access to the important Midwest market. In general, a rail haul may add \$10 to \$15 per ton and an ocean freight another \$10 to \$15 per ton on U.S. potash exports. The significance of a freight advantage to a European supplier of, say \$5 per ton is obviously very important for a product which sells for \$20 per ton free on board plant (Southwest Potash Corp.).

AIR CONDITIONING AND REFRIGERATION

A general statement was made by several industry representatives that ocean freight rates on shipments from the United States to foreign destinations are not competitive with similar rates for shipments to these same destinations from foreign points of origin.

The PRESIDING OFFICER. The bill is open to amendment.

Mr. ENGLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENTS OF STATE AND JUSTICE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION BILL, 1962—CONFERENCE REPORT

Mr. McCLELLAN. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill—H.R. 7371—making appropriations for the Departments of State and Justice, the judiciary, and related agencies for the fiscal year ending June 30, 1962, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of September 11, 1961, pp. 17652-17653, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. McCLELLAN. Mr. President, as unanimously agreed to by the conferees, the bill provides a total appropriation of \$756,422,550. This sum is \$39,468,652 under the estimates, \$20,047,560 over the 1961 appropriations, \$5,122,500 above the House allowances, and \$5,616,000 below the Senate recommendations for fiscal 1962. In my judgment the bill provides adequate sums to carry on the important activities of the departments and agencies. Unless Senators desire to ask about the bill, I do not propose to discuss any items in detail.

Mr. President, I ask unanimous consent to have summary tables on the bill printed at this point in the RECORD.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

SUMMARY OF BILL

Activity	1961 appropriation	1962 estimate	1962 House bill	1962 Senate bill	Conference action
State-----	\$254,745,754	\$289,675,000	\$267,478,000	\$272,695,000	\$269,717,000
Justice-----	296,600,180	298,384,000	294,239,900	294,489,900	294,489,900
Judiciary-----	52,445,488	56,050,292	54,497,650	55,064,650	54,777,650
USIA-----	131,695,568	151,480,000	134,782,500	138,901,000	136,550,000
Civil Rights Commission-----	888,000	302,000	302,000	888,000	888,000
Total-----	736,374,990	795,891,202	751,300,050	762,038,550	756,422,550

TITLE I—DEPARTMENT OF STATE

Item	Appropriations, 1961	Budget estimates, 1962	House bill, 1962	Senate bill, 1962	Conference action
ADMINISTRATION OF FOREIGN AFFAIRS					
Salaries and expenses-----	\$125,265,000	\$136,367,000	\$132,000,000	\$134,750,000	\$133,250,000
Representation allowances-----	872,000	954,000	925,000	925,000	925,000
Acquisition, operation, and maintenance of buildings abroad-----	10,723,000	20,000,000	10,000,000	10,000,000	10,000,000
Acquisition, operation, and maintenance of buildings abroad (special foreign currency program)-----	4,500,000	5,300,000	4,500,000	5,300,000	4,650,000
Emergencies in the diplomatic and consular service-----	2,300,000	1,500,000	1,500,000	1,500,000	1,500,000
Payment to the foreign service retirement and disability fund-----	2,540,000				
Extension and remodeling, State Department Building-----	500,000				
Total, administration of foreign affairs-----	146,700,000	164,121,000	148,925,000	152,475,000	150,325,000

TITLE I—DEPARTMENT OF STATE—Continued

Item	Appropriations, 1961	Budget esti- mates, 1962	House bill, 1962	Senate bill, 1962	Conference action
INTERNATIONAL ORGANIZATIONS AND CONFERENCES					
Contributions to international organizations.....	\$48,700,754	\$61,576,000	\$61,576,000	\$61,576,000	\$61,576,000
Missions to international organizations.....	1,953,000	2,190,000	2,100,000	2,100,000	2,100,000
International conferences and contingencies.....	1,943,000	2,135,000	1,943,000	1,943,000	1,943,000
International tariff negotiations.....	650,000	180,000	171,000	171,000	171,000
U.S. Citizens Commission on NATO.....	150,000	150,000	125,000	150,000	150,000
Total, international organizations and conferences.....	53,396,754	66,231,000	65,915,000	65,940,000	65,940,000
INTERNATIONAL COMMISSIONS					
International Boundary and Water Commission, United States and Mexico:					
Salaries and expenses.....	616,000	618,000	604,000	604,000	604,000
Operation and maintenance.....	2,021,000	1,966,000	1,950,000	1,950,000	1,950,000
Construction.....	9,225,000	15,173,000	13,173,000	13,173,000	13,173,000
American sections, international commissions.....	382,000	428,000	415,000	415,000	415,000
International fisheries commissions.....	1,896,000	1,938,000	1,896,000	1,938,000	1,910,000
Total, international commissions.....	14,140,000	20,123,000	18,038,000	18,080,000	18,052,000
EDUCATIONAL EXCHANGE					
International educational exchange activities.....	26,016,000	30,000,000	27,000,000	27,000,000	27,000,000
International educational exchange activities (special foreign currency program).....	6,600,000	8,200,000	6,600,000	8,200,000	7,400,000
Total, educational exchange.....	32,616,000	38,200,000	33,600,000	35,200,000	34,400,000
OTHER					
Rama Road, Nicaragua.....	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Pan American Health Organization building site.....	875,000				
Payment to the Government of Japan for Bonin Islanders' claims.....	6,000,000				
Presentation of a statue to Uruguay.....	18,000				
Total, other.....	7,893,000	1,000,000	1,000,000	1,000,000	1,000,000
Total, Department of State.....	254,745,754	289,675,000	267,478,000	272,695,000	269,717,000

TITLE II—DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES AND GENERAL ADMINISTRATION					
Salaries and expenses, general administration.....	\$4,030,000	\$4,240,000	\$4,165,000	\$4,165,000	\$4,165,000
Salaries and expenses, general legal activities.....	14,265,000	15,660,000	15,325,000	15,325,000	15,325,000
Salaries and expenses, Antitrust Division.....	5,074,000	5,500,000	5,500,000	5,500,000	5,500,000
Salaries and expenses, U.S. attorneys and marshals.....	24,583,180	25,715,000	25,085,400	25,085,400	25,085,400
Fees and expenses of witnesses.....	1,835,000	1,875,000	1,835,000	1,835,000	1,835,000
Total, legal activities and general administration.....	49,793,180	52,990,000	51,910,400	51,910,400	51,910,400
FEDERAL BUREAU OF INVESTIGATION					
Salaries and expenses.....	125,550,000	127,216,000	127,216,000	127,216,000	127,216,000
IMMIGRATION AND NATURALIZATION SERVICE					
Salaries and expenses.....	62,687,000	65,360,000	63,500,000	63,500,000	63,500,000
FEDERAL PRISON SYSTEM					
Salaries and expenses, Bureau of Prisons.....	45,195,000	47,168,000	46,613,500	46,613,500	46,613,500
Buildings and facilities.....	9,875,000	2,350,000	1,800,000	2,050,000	2,050,000
Support of U.S. prisoners.....	3,300,000	3,300,000	3,200,000	3,200,000	3,200,000
Total, Federal prison system.....	58,370,000	52,818,000	51,613,500	51,863,500	51,863,500
ALIEN PROPERTY ACTIVITIES					
Limitation on salaries and expenses, alien property activities.....	(755,000)	(690,000)	(690,000)	(690,000)	(690,000)
Total, Department of Justice.....	296,600,180	298,384,000	294,239,900	294,489,900	294,489,900

TITLE III—THE JUDICIARY

SUPREME COURT OF THE UNITED STATES					
Salaries.....	\$1,440,000	\$1,479,000	\$1,479,000	\$1,479,000	\$1,479,000
Printing and binding Supreme Court Reports.....	90,000	92,000	92,000	92,000	92,000
Miscellaneous expenses.....	69,800	100,000	82,800	82,800	82,800
Care of buildings and grounds.....	287,200	288,000	284,400	284,400	284,400
Automobile for the Chief Justice.....	6,588	6,702	6,700	6,700	6,700
Total, Supreme Court.....	1,893,588	1,965,702	1,944,900	1,944,900	1,944,900
COURT OF CUSTOMS AND PATENT APPEALS					
Salaries and expenses.....	357,300	359,000	359,000	359,000	359,000
CUSTOMS COURT					
Salaries and expenses.....	840,500	935,000	895,000	895,000	895,000
COURT OF CLAIMS					
Salaries and expenses.....	914,600	955,000	955,000	955,000	955,000
Repairs and improvements.....	9,500	9,500	9,500	9,500	9,500
Total, Court of Claims.....	924,100	964,500	964,500	964,500	964,500

Footnote at end of tables.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited).

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HIGHLIGHTS: House passed Peace Corps bill. Senate committee reported Delaware River Basin compact bill.

HOUSE

1. PEACE CORPS. By a vote of 287 to 97, passed with amendments H. R. 7500, to establish the Peace Corps on a permanent basis. pp. 18311-55, 18374
2. APPROPRIATIONS. Conferees were appointed on H. R. 8072, the D. C. appropriation bill. Senate conferees have already been appointed. p. 18356
3. WETLANDS. Received the conference report on H. R. 7391, to promote the conservation of migratory waterfowl by authorizing the Interior Department to acquire wetlands and other essential waterfowl habitat (H. Rept. 1184). p. 18356
4. FOREIGN TRADE. The Interstate and Foreign Commerce Committee reported with amendments H. R. 8465, to prohibit the shipment in interstate or foreign commerce of articles imported from Cuba (H. Rept. 1182). p. 18397
The Ways and Means Committee voted to report (but did not actually report) H. R. 9189, to amend the Tariff Act of 1930 and certain related laws to provide for the restatement of the tariff classification provisions, and (with amendments) H. R. 5193, to impose import taxes on lead and zinc. p. D854
Several Representatives discussed the escape clause provision of the Trade Agreements Act. pp. 18386-90

5. POSTAL RATES. The Rules Committee reported a resolution for the consideration of H. R. 7927, to adjust postal rates. p. 18397
6. FISH FLOUR. Rep. Pike discussed the use of fish flour, saying, "Let us untie the hands of American industry and reap the bountiful harvest of the sea for the benefit of the hungry of the world." pp. 18390-1
7. FOOD. Received from the Comptroller General a report on the review of enforcement and certification activities of the Food and Drug Administration. p. 18396
8. LEGISLATIVE PROGRAM. Rep. McCormack inserted a statement, "Status of Kennedy Legislative Program." p. 18360
9. HEALTH BENEFITS. Rep. Lesinski inserted an article about the Blue Cross program available to Federal employees under the Federal Employees Health Benefit Act. p. 18360
10. TELEVISION. Rep. Stratton discussed the effect of the proposed elimination of certain VHF channels on rural areas, and inserted an article, "TV Switch to VHF Would Hurt Area." pp. 18377-8
11. EDUCATION. Rep. Wilson, Ind., inserted an article, "School Bill Worries President." pp. 18361-2

SENATE

12. TRANSPORTATION. Passed with amendments H. R. 6775, to extend the authority for dual rate agreements by steamship conferences (pp. 18227-54). Conferees were appointed (p. 18254).
Agreed to the following amendments:
 - By Sen. Kefauver, to strike out Sec. 1 of the bill which would have amended the third paragraph of Sec. 14 of the Shipping Act of 1916 to insert the word "unjustly" before the word "discriminating" so as to conform that section to all other portions of the Shipping Act. pp. 18227
 - By Sen. Kefauver, to extend the right to petition against unreasonable rates to municipalities which operate ports and port authorities. pp. 18229-30
 - By Sen. Kefauver, to provide that any contract, amendment, or modification of any contract not permitted by the Federal Maritime Commission shall be unlawful, and contracts, amendments, and modifications shall be lawful only when and as long as permitted by the Commission. pp. 18228-9
 - By Sen. Kefauver, to provide that the Federal Maritime Commission shall disapprove any conference rate, fare, or charge which after hearing it finds to be so unreasonably high or low as to be detrimental to the commerce of the U. S. pp. 18248-9
 - By Sen. Kefauver, to strike out Sec. 6 of the bill which would have permitted carriers to solicit information regarding the activities of shippers in order to enforce their dual rate agreements. pp. 18249-50
 - By Sen. Schoepel, to modify the bulk cargo provisions so as to give the Commission more discretion in determining whether or not dual-rate contracts should apply to less than shipload amounts of liquid bulk cargo which are not chemicals. p. 18250
Rejected the following amendments:
 - By Sen. Kefauver, 28 to 54, to strike out a phrase providing that agreements shall not be approved between conferences of carriers serving

different trades that would otherwise be naturally competitive "unless each conference retains the right of independent action." pp. 18230-5
By Sen. Kefauver, 33 to 45, which would have provided that the Commission could not approve agreements which were reasonably likely to cause the elimination or prevent the entry of a carrier into the trade, or if its probable effect would be likely to exclude any carrier from any trade. pp. 18235-47

13. RIVER BASINS. The Interior and Insular Affairs Committee reported with an additional amendment H. J. Res. 225, to grant the consent of Congress to the Delaware River Basin Compact (S. Rept. 1032)(this bill was previously reported by the Judiciary Committee on Aug. 31). p. 18207
14. WHEAT. Sen. Mansfield inserted his letter (for himself and other Senators) to Secretary Freeman urging the "Department develop... recommendations for a comprehensive, long-range wheat program embodying the principles of the bushel program, in sufficient time to submit your recommendations to the Congress by January 1962," and the Secretary's reply stating that he had appointed a wheat and feed grain committee to study various alternative proposals for dealing with wheat and feed grains. pp. 18211-2
15. FOREIGN TRADE. Agreed to the House amendments to S. 2325, to permit the Export-Import Bank to issue guarantees and insurance where private enterprise will not issue them. This bill will now be sent to the President. p. 18254
16. MILITARY CONSTRUCTION APPROPRIATION BILL, 1962. Disagreed to a House amendment to a Senate amendment to this bill, H. R. 8302. Further conferees were appointed. pp. 18255-9
17. PERSONNEL. As reported (see Digest 157), S. 188, the 30-year retirement bill, provides that an employee may retire optionally with full annuity at age 55 with 30 years or more of service (existing law requires a reduction of 1 percent per year for each year under 60 of annuities of employees retiring optionally after reaching age 55 with 30 years or more of service).
18. D. C. APPROPRIATION BILL, 1962. Passed as reported this bill, H. R. 8072. Conferees were appointed. pp. 18260, 18265-7.
19. FOREIGN AID APPROPRIATION BILL, 1962. This bill, H. R. 9033, was made the unfinished business. p. 18291
20. FOOD FOR PEACE. Sen. Neuberger discussed agricultural production in underdeveloped nations and the importance of the Food for Peace program in providing the peoples of these nations with an adequate diet. pp. 18295-6
21. EDUCATION. Sen. Humphrey reviewed and discussed the history of Federal aid to education in the U. S., including the land-grant colleges, and inserted several items on this subject. pp. 18296-306
22. LEGISLATIVE PROGRAM. Sen. Mansfield stated that the foreign aid appropriation bill will be considered Fri., and Sat. debate will begin on a measure to change the Senate Rules regarding cloture. p. 18261

ITEMS IN APPENDIX

23. FARM PROGRAM. Extension of remarks of Sen. Hartke inserting an article, "Freedom to Farm," reviewing Ezra Taft Benson's book. p. A7242

24. CONSERVATION. Extension of remarks of Sen. Wiley commending and inserting an article by Interior Secretary Udall, "Plea for a Green Legacy." pp. A7242-3
25. FOREIGN TRADE. Extension of remarks of Rep. Daniels inserting an address by Rep. Dent, "Imports and Our Economy--The Relationship Between Aid and Trade." pp. A7246-8
26. PESTICIDES. Extension of remarks of Rep. Dingell inserting an article, "Pesticides Are Good Friends, But Can Be Dangerous Enemies If Used By Zealots," and stating that the editorial is a "warning of clear and present danger in the overuse, or careless use, of pesticides." pp. A7260-1
27. FOOD FOR PEACE. Extension of remarks of Rep. Multer inserting an article published by the National Farmers Union, "Food for Peace," and stating that "its message is the most human of all: technological advances in agriculture have now--for the first time in history--made it possible to feed adequately the whole of the vast multitudes of the world." pp. A7265-6
28. MILK SANITATION. Extension of remarks of Rep. Kastenmeier inserting an article, "Dairy Farmers In State Get Boost From Freeman," which reviews the progress that has been made on national milk sanitation legislation. pp. A7267-8
29. RESEARCH; FARM TENANCY. Extension of remarks of Rep. Nygaard discussing a new program of agricultural law research being carried on by the Univ. of North Dakota, the first study being a survey of laws affecting farm tenancy in N. Dak. p. A7268

BILLS INTRODUCED

30. MONOPOLIES. S. 2552, by Sen Sparkman, to amend the Federal Trade Commission Act to provide for the issuance of temporary cease and desist orders to prevent certain acts and practices pending completion of Federal Trade Commission proceedings; to the Commerce Committee. Remarks of author. pp. 18207-8
31. RECREATION. S. Con. Res. 48, by Sen. Metcalf, to express sense of Congress on making studies to identify remaining shoreline recreation sites along the rivers of the United States, which was referred to the Interior and Insular Affairs Committee. Remarks of author. pp. 18208-9
32. FORESTRY. H. R. 9219, by Rep. McMillan, and H. R. 9220, by Rep. May, to authorize the Secretary of Agriculture to encourage and assist the several States in carrying on a program of forestry research; to the Agriculture Committee.
33. PERSONNEL. H. R. 9223, by Rep. St. Germain, to provide for recognition of Federal employee unions and to provide procedures for the adjustment of grievances to the Post Office and Civil Service Committee.
34. PROPERTY. H. R. 9226, by Rep. Smith of Iowa, to amend the Federal Property and Administrative Services Act of 1949 with respect to the procurement of property and services; to the Government Operations Committee.

PRINTED HEARINGS RECEIVED IN THIS OFFICE

35. TOBACCO. H. R. 1022, lease and transfer of tobacco acreage allotments. House Agriculture Committee.

town council. She is serving as the official representative of the city of Eindhoven in a number of important commemorative ceremonies in Washington, Fort Campbell, Philadelphia, and New York. Wallace Daczkowski, past president of the 101st Airborne Association, is serving as her official escort.

To express the warm and close ties which unite the American and Dutch people, Miss van Lieshout, is bringing with her a very special and very Dutch gift; 10,000 Holland tulip, hyacinth, and daffodil bulbs to be planted at Fort Campbell as a living tribute to the valor of the 101st and the lasting friendship between our two countries.

Miss van Lieshout's visit, under the sponsorship of the 101st Airborne Association in cooperation with the 10,000 members of the Associated Bulb Growers of Holland, will result in the creation of a garden of beautiful flowers each spring which will remind us of what I believe to be the kind of people-to-people understanding and affection which we so sorely need in this time of crisis.

The Berlin crisis, as many Senators know, is primarily responsible for the fact that units of the 101st Airborne Division will be returning to Western Europe once again late this year. It is not a circumstance which any of us wants and which is not of our making. But I believe the presence of the 101st will bring a welcome reassurance to the people of Holland and Western Europe and serve to emphasize that once again we stand with out NATO allies in the common defense of Western civilization.

During her visit to Washington, Miss van Lieshout will participate in several important ceremonies marking the 17th anniversary of the Eindhoven airdrop, and I am pleased to tell my colleagues in the Senate and House that they will have an opportunity to meet this wonderful young girl at a reception in her honor to be given this afternoon in the Old Supreme Court Chamber of the Capitol from 4:30 to 6:30 p.m.

I hope that many Senators will be with us. They are all most welcome. I believe they will enjoy meeting Miss van Lieshout, who is now in the city, and through her, the people of Eindhoven.

AMENDMENT OF SHIPPING ACT OF 1916

The Senate resumed the consideration of the bill (H.R. 6775) to amend the Shipping Act of 1916, as amended, to provide for the operation of steamship conferences.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum, and that the time necessary for the call of the roll not be charged to either side on the amendment or on the bill.

The VICE PRESIDENT. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KUCHEL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Is there objection?

Mr. KEFAUVER. Mr. President, reserving the right to object—although I will not object—

The VICE PRESIDENT. The Chair rules that the request is not debatable. A Senator must either object or not object to the request.

Is there objection to the request that the order for the quorum call be rescinded? The Chair hears none, and it is so ordered.

The time is now under limitation. The Senator from Tennessee has the floor.

Mr. KUCHEL. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield briefly to the Senator from California.

Mr. KUCHEL. I ask unanimous consent that the minority may be permitted to yield 1 minute to the able junior Senator from New York.

The VICE PRESIDENT. On the bill? Mr. KUCHEL. On the bill.

The VICE PRESIDENT. The Senator from California yields 1 minute on the bill to the Senator from New York [Mr. KEATING].

WHO EVER VOTED TO KILL SANTA CLAUS?

Mr. KEATING. Mr. President, the Rochester, N.Y., Times-Union on August 28 contained a short, pointed editorial on the new wheat program. It ends with the question, "Who ever voted to kill Santa Claus?" The answer obviously is, "Only a handful of wheat farmers." I ask unanimous consent that this perceptive editorial appear at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Rochester Times-Union,
Aug. 28, 1961]
POOR CHOICE

It's no surprise at all to see farmers vote overwhelmingly for new wheat controls and higher subsidies. The alternative was no control but a support price of \$1.20 a bushel, or 69 cents less than this year's support price and 80 cents less than contemplated next year. Who ever voted to kill Santa Claus?

RESOLUTION OF THE PULASKI GRANGE NO. 730

Mr. KEATING. Mr. President, the Pulaski Grange No. 730 recently adopted a thoughtful resolution on work relief. I ask unanimous consent that this resolution be printed at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

Whereas it has been the practice of many local governments to furnish work for able-bodied persons in need of relief, thereby benefiting the needy person, the public work program of the community, and the tax-paying public; and

Whereas, Federal regulations are putting a stop to this practice: Therefore, be it

Resolved, That the membership of Pulaski Grange No. 730 views with alarm these Federal regulations and respectfully requests the following to use their influence to correct this condition as soon as possible: President John F. Kennedy, Representative Clarence E. Kilburn, Senator Jacob K. Javits, Senator Kenneth B. Keating, Oswego County Pomona Grange, the executive committee of National Granges.

AMENDMENT OF SHIPPING ACT OF 1916

The Senate resumed the consideration of the bill (H.R. 6775) to amend the Shipping Act of 1916, as amended, to provide for the operation of steamship conferences.

Mr. KEFAUVER. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be not charged to either side and that I do not lose the floor.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KEFAUVER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. KEFAUVER. Mr. President, I call up for consideration my amendment 9-6-61-B.

The VICE PRESIDENT. The amendment will be stated.

The LEGISLATIVE CLERK. On page 14, strike lines 4 through 6.

On page 14, line 7, strike out "Sec. 2." and insert in lieu thereof "That" and renumber sections of the bill to conform.

Mr. KEFAUVER. Mr. President, I understand, after conferring with the distinguished Senator from California, that he is willing to accept the amendment.

Mr. ENGLE. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. ENGLE. The amendment would delete our amendment to the House-passed bill explained in the last paragraph of page 11 of our report No. 860 and the first two paragraphs on page 12 thereof.

The proposed amendment is acceptable, but I wish to explain that in accepting it I do so because, in my opinion and that of the Committee on Commerce, it is not necessary to amend section 14(3) in any way in order to make it clear that the Commission may permit the use of dual rate contracts in accordance with the provisions expressly set forth in the new section 14b added to the Shipping Act, 1916, by this act.

It should be pointed out in accepting this Kefauver amendment that section 14b, the dual rate section, begins with the phrase "Notwithstanding any other provisions of this Act"; and, therefore, the committee is convinced that it is unnecessary to modify section 14(3) in any way for the purpose of clearly legalizing dual rate contracts which meet the standards set forth in section 14b.

With that explanation, I have no objection to the amendment.

Mr. KEFAUVER. Mr. President, the original Shipping Act of 1916 in section 14 enumerates two groups or types of violations that Congress wished to outlaw directly and fully. It wished to treat these two types of predatory practices as we treat per se violations of the Sherman Act. First, fighting ships were outlawed. Second, deferred rebates, a predatory practice, were prohibited. Unfortunately, particularly among some foreign carriers and even some U.S. carriers, it is still a secret predatory practice.

Finally, the broad category of discriminations for the purpose of putting some competitors out of business were prohibited in section 14(3).

The Commerce Committee bill inserts the word "unjustly" before the word "discrimination," which, of course, completely changes the meaning of section 14(3) of the Shipping Act of 1916.

The Senator from California is quite right in saying that my proposal does not have any connection with dual rate contracts. It is not pertinent to the matter which is now under consideration. I appreciate his accepting the amendment.

Mr. President, I ask unanimous consent that a brief further explanation of the meaning and historical background of section 14(3), of the Shipping Act be printed at this point in the RECORD.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION

Lines 4 through 6 on page 14 of the Senate version would amend section 14(3), of the Shipping Act of 1916 by inserting the word "unjustly" before the word "discriminating." As thus written, the section would outlaw "unjustly discriminating" methods aimed at curtailing outside competition.

The addition of the word "unjustly" to section 14(3) of the Shipping Act of 1961 would clearly overrule the *Isbrandtsen* decision (*Federal Maritime Board v. Isbrandtsen Co.*, 356 U.S. 481 (1958)) in which the Supreme Court of the United States held that Congress intended the "resort to" clause of section 14(3), to prohibit the use by carriers of all discriminating methods aimed at outside competition. Other sections of the Shipping Act, in particular sections 15, 16, and 17, prohibit only "unjustly discriminatory" acts. But section 14, the court held, was designed to protect shippers against all forms of retaliation and independent carriers against any type of discrimination. The Supreme Court stated:

"It is urged that our construction produces a flat and unqualified prohibition of any discrimination by a carrier for any reason and converts the rest of the statute into surplusage. But that argument overlooks the revealed legislative purpose of section 14(3). That purpose, as we have said, was to outlaw practices in addition to those specifically prohibited elsewhere in the section when such practices are used to stifle the competition of independent carriers. The characterization 'unjustly discriminatory' and 'unjustly prejudicial' found in other sections (sections 15, 16, and 17) imply a congressional intent to allow some practices dealt with by those sections, but the practices outlawed by the 'resort to' clause of section 14(3) take their gloss from the abuses specifically proscribed by the section; that is, they are confined to practices designed to stifle outside competition" (356 U.S. at 495).

The proposed language did not appear in the Bonner bill since it was not considered necessary to amend section 14(3) of the Shipping Act in view of the fact that dual-rate agreements were expressly made lawful under the bill. Thus section 14(3) can no longer have any possible bearing on the lawfulness of dual-rate contracts provided they conform to the requirements of the act.

The proposed addition was put forth by the American Steamship Committee on Conference Studies in an effort to clarify the intent of Congress in enacting the Shipping Act of 1916 since, in disagreement with the Supreme Court, the steamship committee did not "believe that there was any intention on the part of Congress to make this distinction (between section 14(3) and other sections of the act)." Of course, the American Steamship Committee on Conference Studies is far less qualified to determine congressional intent of some 45 years past than the Supreme Court. But even if this were not the case, allowing some discrimination to eliminate outside competition, providing only that it is not unjust, permits the camel's nose to enter the tent. The history of laxity on the part of the administrative agencies in enforcing the act, the difficulties in distinguishing "just" from "unjust" discriminations, the lengthy process of administrative proceedings necessary in drawing such distinctions, all point to the undesirability of disturbing section 14(3) of the act, which constitutes a strong bulwark against predatory practices in our foreign commerce, in any such way at this time.

Of this amendment, Chairman Celler in his letter to me dated August 14, 1961, said:

"As if this were not enough, the print also proposes to alter section 14(3) of the Shipping Act of 1916 in such a manner as largely to destroy its usefulness as a protection to independent competitors. The Supreme Court in the *Isbrandtsen* case interpreted this section as intended by Congress to prohibit all discriminatory or unfair practices when used to stifle independent competition. The print, by condemning only 'unjustly discriminatory' methods, purports to overturn this reading and with it the strict prohibitions against the use of predatory devices which have been firmly imbedded in the law for over 45 years."

The VICE PRESIDENT. Do the Senators yield back the remainder of their time?

Mr. KEFAUVER. I yield back my time.

Mr. ENGLE. I yield back my time.

The VICE PRESIDENT. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

Mr. KEFAUVER. Mr. President, I call up my amendment designated "9-1-61-K" and ask that it be read.

The VICE PRESIDENT. The amendment will be stated.

The LEGISLATIVE CLERK. On page 16, line 22, after the period, it is proposed to insert the following: "Any contract, amendment, or modification of any contract not permitted by the Commission shall be unlawful, and contracts, amendments, and modifications shall be lawful only when and as long as permitted by the Commission; before permission is granted or after permission is withdrawn it shall be unlawful to carry out in whole or in part, directly or indirectly, any such contract, amendment, or modification."

On page 20, line 1, after the word "section" insert "or of section 14b".

Mr. KEFAUVER. This amendment to the new section 14 (b), which is the part of the bill authorizing dual rate shipping contracts, provides certain minor restrictions. It should be unlawful to violate those restrictions. Either through oversight or for some other reason, it was not specified that the violating of these restrictions was illegal, and no penalty was provided.

It is my understanding that the distinguished Senator from California is willing to accept the amendment.

Mr. ENGLE. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. ENGLE. We see no objection to the amendment; in fact, this was the intention of the bill. I think the language of the amendment clarifies the intent.

Mr. KEFAUVER. I appreciate the attitude of the Senator from California.

Mr. President, I ask unanimous consent that a slightly more detailed explanation of the purpose of the amendment may be printed at this point in the RECORD.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION

Amendment K is designed to assure that institution of a dual-rate agreement contrary to the provisions of the Shipping Act as amended is unlawful and to provide penalties in case of violation thereof. It provides that it shall be unlawful to employ a dual-rate contract before permission, or after permission is revoked. The penalties are the same as those already provided under section 15 of the act.

Under the law as it exists today, an unapproved dual-rate agreement (except those temporarily legalized by the "moratorium law") is a violation of section 15 of the act and of the antitrust laws as well. (See *Isbrandtsen Co. v. United States*, 211 F. 2d 51 (D.C. Cir. 1954), certiorari denied, 347 U.S. 990 (1954); *Pacific Westbound Conference v. Leval*, 201 Oreg. 390, 269 P. 2d 541 (1954), certiorari denied, 348 U.S. 897 (1954); *River Plate & Brazil Conferences v. Pressed Steel Car Co.*, 124 F. Supp. 88 (S.D.N.Y. 1954), affirmed 227 F. 2d 60 (2d Cir. 1955); *Anglo Canadian Shipping Co. v. United States*, 264 F. 2d 405, 411 (9th Cir. 1959).)

H.R. 6775, as amended, now permits use of dual-rate agreements conforming to certain conditions upon permission of the Board. But what is the status of a dual-rate contract for which permission has not been sought or for which permission has been denied? Does it now become an "unapproved" agreement in violation of section 15 under the cases cited above? Or is the new "permission" procedure introduced by H.R. 6775 intended to remove all of the "approval" requirements heretofore applicable to such contracts? The bill is unclear in this respect. If the latter should prove to be the case, then there are no sanctions whatever for the use of a dual-rate agreement not conforming to the standards and requisites of the act. This would be a shocking omission and should be remedied by making employment of dual-rate agreements contrary to the provisions of the act unlawful and a suitable penalty provided.

The purpose of this amendment is to assure that the rule of the *Isbrandtsen* decision of the circuit court in 1954 is not in some way overruled by the new law. According to the Senate committee report on the bill: "In *Isbrandtsen Co. v. United States* (211 F. 2d 51 (D.C. Cir.) cert. denied 347 U.S. 990 (1954)), the U.S. Court of Appeals for the District of Columbia Circuit held

the Board's action improper on the grounds that before such an agreement may become effective under such circumstances the Board must hold a hearing and give its formal approval" (S. Rept. No. 860, 87th Cong., 1st sess., at 8-9 (1961)).

My amendment simply makes the new section 14b added by the bill conform to the language appearing in section 15, requiring both notice and hearing. I don't see what objection there can be to this amendment as it simply assures that existing law will not be overturned by this new law, and provides the same procedure under both section 14, with respect to dual-rate contracts, and section 15, with regard to all other types of agreements.

The VICE PRESIDENT. Do the Senators yield back the remainder of their time?

Mr. KEFAUVER. I yield back the remainder of my time.

Mr. ENGLE. I yield back the rest of my time.

The VICE PRESIDENT. All the time is yielded back. The question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

Mr. KEFAUVER. Mr. President, I call up my amendment designated "6-1-61—O," and ask that it be stated.

The LEGISLATIVE CLERK. On page 14, line 11, after "notice" it is proposed to insert "and hearing".

Mr. KEFAUVER. Mr. President, everywhere else in the bill it is provided that where some action is to be taken by the Maritime Commission, both notification and a hearing shall be given. This particular provision would simply give shippers, consignees, and others, an opportunity to have a hearing.

As the bill is presented, it provides that after the notice, the Commission may agree to a conference. It does not say anything about giving anyone a hearing in connection with the questions involved. The amendment would simply insert hearing after the word notice, on page 14, line 11. I feel certain the Senator from California must have intended the language to read that way.

Mr. ENGLE. Mr. President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield.

Mr. ENGLE. We believe the Administrative Procedure Act would have required a hearing in any contested matter. However, the amendment offered by the distinguished Senator from Tennessee makes the hearing mandatory, and to that extent clarifies the bill. We have no objection to the amendment.

Mr. KEFAUVER. Mr. President, I ask unanimous consent to have printed at this point in the RECORD a short further explanation of the amendment, with references to certain cases in the Supreme Court of the United States.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION

The purpose of this amendment is to assure that the rule of the *Isbrandtsen* decision of the circuit court in 1954 is not in some way overruled by the new law. According to the Senate committee report on the bill: "In *Isbrandtsen Co. v. United States* (211 F. 2d 51 (D.C. Cir.) cert. denied 347 U.S. 990 (1954)), the U.S. Court of Appeals for

the District of Columbia Circuit held the Board's action improper on the grounds that before such an agreement may become effective under such circumstances the Board must hold a hearing and give its formal approval" (S. Rept. No. 860, 87th Cong., 1st sess., at 8-9 (1961)).

My amendment simply makes the new section 14b, added by the bill, conform to the language appearing in section 15, requiring both notice and hearing. I don't see what objection there can be to this amendment as it simply assures that existing law will not be overturned by this new law, and provides the same procedure under both section 14, with respect to dual-rate contracts, and section 15, with regard to all other types of agreements.

These amendments are designed to assure that institution of a dual-rate agreement contrary to the provisions of the Shipping Act as amended is unlawful and to provide penalties in case of violation thereof. They provide, simply, that it shall be unlawful to employ a dual-rate contract before permission, or after permission is revoked; penalties are the same as those already provided under section 15 of the act.

Under the law as it exists today, an unapproved dual-rate agreement (except those temporarily legalized by the "moratorium law") is a violation of section 15 of the act and of the antitrust laws as well. (See *Isbrandtsen Co. v. United States*, 211 F. 2d 51 (D.C. Cir. 1954), certiorari denied 347 U.S. 990 (1954); *Pacific Westbound Conference v. Local*, 201 Oreg. 390, 269 P. 2d 541 (1954), certiorari denied, 348 U.S. 897 (1954); *River Plate & Brazil Conferences v. Pressed Steel Car Co.*, 124 F. Supp. 88 (S.D.N.Y. 1954), affirmed 227 F. 2d 60 (2d Cir. 1955); *Anglo Canadian Shipping Co. v. United States*, 264 F. 2d 405, 411 (9th Cir. 1959).)

H.R. 6775, as amended, now permits use of dual-rate agreements conforming to certain conditions upon "permission" of the Board. But what is the status of a dual-rate contract for which permission has not been sought or for which permission has been denied? Does it now become an "unapproved" agreement in violation of section 15 under the cases cited above? Or is the new "permission" procedure introduced by H.R. 6775 intended to remove all of the "approval" requirements heretofore applicable to such contracts? The bill is unclear in this respect. If the latter should prove to be the case, then there are no sanctions whatever for the use of a dual-rate agreement not conforming to the standards and requisites of the Act. This is a shocking omission and should be remedied by making employment of dual-rate agreements contrary to the provisions of the act unlawful and a suitable penalty provided.

Mr. KEFAUVER. Mr. President, I call up my amendment designated "9-1-61—H" and ask that it be read.

The VICE PRESIDENT. The amendment will be stated.

The LEGISLATIVE CLERK. On page 24, line 24, after "States," it is proposed to insert the following: "any port authority or municipality which operates a port within the United States, or".

On page 25, line 2, after "that" insert "port,".

Mr. KEFAUVER. Mr. President, this amendment alters the so-called Bartlett amendment, which permits the Commission to suspend discriminatory rates, rules, or regulations directed at States, at the petition of the Governors of the several States. The Bartlett amendment is an excellent augmentation of the act. But why limit the protection to States and permit complaints

before the Commission to be filed only by Governors?

In practice, discrimination is more likely to involve specific ports or specific commodities or regions, rather than any one State. The proposed amendments would extend the right to petition against unreasonable rates to municipalities which operate ports and port authorities, as well, while at the same time retaining the right of Governors to seek similar relief.

The importance of extending this particular protection is evident when one takes into account the many discriminations against ports by steamship conferences which have occurred over the years. Illustrative are the following grievances submitted by the San Diego port director in 1954 against the Trans-Pacific Freight Conference of Japan.

First. The port of San Diego complained that the conference refused to permit member lines to call at San Diego.

Second. Permitted specific cargoes to be discharged San Diego and requiring general cargo on same vessel destined for San Diego to be discharged Los Angeles.

Third. Permitted member lines to carry only cargo in minimum designated lot requirements specified by the conference to San Diego and refusing permission to carry other cargoes.

Fourth. Other practices in accordance with the provisions of the tariff which are also discriminatory against and prejudicial to the port of San Diego.

Fifth. The establishment of and/or charging a different rate for cargo to the port of San Diego from that charged for delivery of cargo to the port of Los Angeles as provided for in rule 21 of the said tariff is a direct violation of said section 205.

Other ports on the West Coast which have been subject to discriminatory treatment at one time or another by steamship conferences include Stockton, Alameda, Oakland, Richmond, Longview, and Bellingham.

On the gulf coast and also on the Atlantic coast there have also been many grievances because of discrimination practiced against ports or port authorities by conferences serving those regions. If a port or a port authority is being discriminated against, it should have a right to petition the Maritime Commission; and the Commission, in order to protect the legitimate interest of the port, should go into the matter promptly. That is the purpose of my amendment.

Mr. ENGLE. Mr. President, the Bartlett-Gruening amendment, which is sought to be amended by means of the amendment of the Senator from Tennessee, was not in the House version of the bill. We included the amendment submitted by the Senators from Alaska [Mr. BARTLETT and Mr. GRUENING] because they complained bitterly that one of the conference rates in the Far East discriminated against Alaskan ports. So we have sought to provide procedures whereby quick action could be obtained in connection with a matter of that sort; we have provided that if a

Governor protests, there will be a priority, insofar as the hearing and the determination are concerned, inasmuch as the Senators from Alaska claim that the hearings could drag on for several years. So the amendment provides that an order to show cause must issue and a decision must be reached within 120 days.

The amendment offered by the Senator from Tennessee would add to those who would be entitled to such priority hearing any port authority or municipality which operates a port within the United States.

Of course, on the face of things, it would seem that everyone should be entitled to have a quick hearing of his case. We limited the provision in regard to having such priority to Governors, because the importance and the dignity of that position seemed to us to warrant the provision of a priority hearing.

But if we now add the ports or port authorities and the municipalities which operate ports, the question is whether we may bog down this procedure by having such a multiplicity of filings that it would be impossible for the Commission to act within the prescribed time. I cannot answer that question; I do not know the answer. If there would not be that result, I would certainly have no objection to this amendment.

Let me say to the distinguished Senator from Tennessee that I shall be glad to accept his amendment with the understanding that we shall take it to conference, and in the meantime I shall try to ascertain from the appropriate persons in the Maritime Commission what they think the effect of the amendment might be on their agenda or their schedule. If they would not anticipate that the multiplicity of filings would be such that they would have to extend the 120 days to 6 months or some similar period, I would see no objection to the amendment.

Mr. KEFAUVER. Let me point out to the Senator from California that it is not, ipso facto, the State that is discriminated against in connection with a determination of what kind of cargo may be unloaded at a port; it is the port authority. In the long run, of course, the State is adversely affected—as, for instance, is the State of Alaska under the present 30-percent differential that is charged at ports in Alaska.

Unless we do include a provision which gives the right to a port or a port authority to protest and to receive an immediate or an expeditious hearing, the commerce of a particular port may be very adversely affected. The Governor may be in an untenable position. For instance, in the case of California, two cities—San Francisco and Los Angeles—were getting all the breaks, whereas San Diego, Stockton, and other cities were complaining. So the Governor would be caught right in the middle of that controversy.

Mr. ENGLE. But if we give everyone a priority, we defeat the very purpose of the procedure advocated by the Senators from Alaska. That is the only point I am making. If we include the port authorities and the municipalities which operate ports, we shall have included

about everyone. Then the question will be whether we shall have in fact destroyed the priority which was created when we provided priority treatment for a complaint made by a Governor. If too many are included, the priority will be destroyed. That is my only point. If, after an examination, it appears that such would not be the case, I would have no objection to the amendment, because I like to see these matters disposed of in the most efficient and timely fashion possible.

Mr. KEFAUVER. I appreciate the Senator's willingness to accept the amendment. I thought a little discussion of it might help in connection with consideration of the amendment in conference.

I point out that not a great many of such discriminations would be protested; but when there are discriminations which should be considered by the Commission, they are of great importance to the ports or to the cities served by the ports.

Furthermore, if the Governor would act first, there would be no occasion for the municipality or the port authority to file a protest. But this amendment would provide relief in a situation in which two ports in a State were receiving special benefits, but other cities in the State were not. So I believe it important that the ports or the port authorities have the right to protest and to have a fast hearing.

If the Senator from California will accept the amendment, I shall yield back the remainder of the time available to me.

Mr. ENGLE. Mr. President, I yield back the remainder of the time available to me.

The VICE PRESIDENT. The question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

The VICE PRESIDENT. The bill is open to further amendment.

Mr. KEFAUVER. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time required for it not be charged to the time available to either side.

The VICE PRESIDENT. Without objection, it is so ordered; and the clerk will call the roll. Without objection, the Senator from Tennessee will retain the floor.

The legislative clerk proceeded to call the roll.

Mr. KEFAUVER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURDICK in the chair). Without objection, it is so ordered.

The bill is open to further amendment.

Mr. KEFAUVER. Mr. President, I call up my amendment identified as "9-1-61—L," and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment offered by the Senator from Tennessee.

The LEGISLATIVE CLERK. It is proposed on page 18, lines 9 and 10, after the words "naturally competitive" to strike out "unless each conference retains the right of independent action."

Mr. KEFAUVER. Mr. President, this is a very important amendment. Section 3 of the Senate Commerce Committee version of H.R. 6775 amends section 15 of the Shipping Act of 1916 to require that the Maritime Board shall not approve any agreement "between conferences of carriers serving different trades that would otherwise be naturally competitive unless each conference retains the right of independent action."

Now, the apparent intent of this provision is clear. It would seem that it is intended to prohibit conference cartels, which operate in competing trade routes, from joining together into supercartels. The prime purpose of such supercartels would be the joint setting of rates in the various, competing trades in such a way as to further lessen competition, which has already been substantially eliminated in each trade involved in such an agreement by the formation of the conference cartels themselves.

However, the bill includes the phrase "unless each conference—entering into the agreement—retains the right of independent action." What is the effect of this phrase? The answer is obvious: It makes the bill's prohibition against supercartels meaningless. The way the bill is now worded, it would prohibit agreements between cartels to form supercartels unless each of the cartels retains the right to disagree with the other. In other words, the bill now reads that there cannot be an agreement to form a supercartel unless there is an agreement to do so. This is obviously preposterous, since the agreement would not be made in the first place unless the parties to the supercartel agreement had decided in advance that they were going to give up the right of independent action in order to achieve the economic results of monopolies. Thus, it is essential that this phrase be eliminated so that what the bill appears to do—outlaw supercartels—is actually done.

As I have indicated, these steamship conferences are international cartels. It is bad enough that the U.S. Congress must authorize under our laws participation by American companies in such international cartels, but to permit them to form supercartels would be beyond all reason. Those of us who lived through the thirties and forties know full well how international cartels have injured our American economy and our defense effort. Let us not compound this at this time.

Let me place before the Senate an example of the evil worked on American shippers by one of these supercartels. There is now in effect an agreement between conference cartels serving the Atlantic coast to Far East trade, and the one serving the Pacific coast to the Far East trade. Under its provisions, the freight rates for shipments of a commodity from the west coast of the United States to Japan are identical to the rates for shipment of the same commodity from the east coast of the United States to Japan, notwithstanding the fact that the distance from the east coast, via the Panama Canal, to Japan

is 8,000 miles greater than from the west coast. Thus, the shippers on the entire west coast are disadvantaged by this agreement, notwithstanding the fact that they are 8,000 miles closer to Japan than the shippers on the east coast.

Moreover, consider the plight of a shipper in St. Louis, for example. While by virtue of the conference cartels, he does have the advantage of choosing between a great number of competing carriers, he was at least free to choose between shipping by a west coast cartel member and an east coast cartel member—according to which charged the lower rate. But, by virtue of the agreement between these two conference cartels, all rate competition between west and east coast carriers to Japan was eliminated. Thus, the St. Louis shipper no longer has any real choice as to how he ships. No matter to which dock he sends his goods, he will find the rates identical.

But there are other such supercartels now in existence. I do not wish to burden the Senate at this time by listing all of them. But let me refer as an additional example, the agreement among the conferences serving the Atlantic coast of the United States to the Mediterranean area, the Atlantic coast of the United States to northern European ports and the one from the Atlantic coast to Swiss destinations. Under that agreement it makes no difference to a shipper transporting goods from the east coast of the United States to Swiss destinations whether he routes his goods via Mediterranean or northern European ports—he pays the same ocean freight rate either way. Thus, the potential advantage of competition between the lines serving the southern routes and the lines serving the northern routes is eliminated. The result is that once again the American exporter is disadvantaged by a lack of competition.

The bill imposes no limit on the number of conference cartels which can join together into supercartel agreements. There is no reason why all the conference cartels engaged in U.S. foreign commerce could not join together into one gigantic supercartel. The Commerce Committee report tells us that competition, no matter how slight, is inimical to international shipping. It points out that the natural—indeed, necessary—result of this fact is the formation of cartels to protect ocean carriers from competition. Nothing would protect ocean carriers—both foreign and American—from competition more thoroughly and more effectively than a supercartel of every single conference cartel. It would permit them a virtual free hand in setting the rates which American exporters and importers must pay to any spot in the world. This is a preposterous thing to approve by legislation. I, therefore, strongly urge that the phrase “unless each conference retains the right of independent action” be stricken from H.R. 6775.

When that phrase is stricken, the bill will carry out what appears to be the meaning of the Senate committee, which is to require that each conference operate on its own.

Mr. President, I reiterate that the American tradition is to have free competitive enterprise. It is bad enough to take out from under the antitrust and competitive laws a great segment of our economy by allowing a virtual monopoly exemption to a conference cartel; but when it is suggested that we allow all of them to join together in a supercartel, it is even worse. Under that condition, there would be no competition whatsoever as among the cartels, and the shipper would have no choice as to whether he shipped by the North Atlantic ports, the Mediterranean ports, or the Pacific ports.

I say that placing such authority in the hands of foreign-dominated ship conferences—and 85 percent of them are dominated by foreign lines—would place the American shipper at the mercy of the foreign-dominated cartels. It would not be fair, would not be right, and would not be in keeping with our American tradition of free competitive enterprise.

Mr. ENGLE. Mr. President, I yield myself such time as I may require from the allotted time on the amendment.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. ENGLE. Mr. President, the amendment was submitted to the House committee and was rejected. The amendment was considered by the Senate committee and not included in the proposed legislation. Our committee deals with this question on page 16 of the report, for the information of Senators who wish to read what the committee had to say about it.

The committee certainly does not subscribe to such a blanket indictment of the long-established Board approval policy founded apparently on the same sound economic base which underlies the conference itself.

As of October 1959, there were nine interconference agreements approved by the Board and its predecessors. We are not seeking not to authorize something new. We simply refuse to deauthorize something which has been going on over a great number of years. There were nine of the interconference agreements as of October 1959. Five applied to certain European areas where cargo can move through a number of competitive gateways, either direct or with transshipment. Two applied in the Orient—United States North Atlantic trade and were designed to protect direct rates as against rate cutting by intermediate conferences which might carry transshipment cargo in the trade. Of the other two, one was between New York Freight Bureau and the Trans-Pacific Freight Conference of Japan; the other, between the Pacific Coast European Conference and the Hawaiian Islands/European Conference.

The committee noted with approval the comments of the former Chairman of the Federal Maritime Board, Hon. Clarence G. Morse:

These interconference agreements are designed as a means of stabilizing rates in the respective trades, of protecting the competitive positions of the respective conferences, and of preventing interconference rate wars which deprive shippers and carriers alike of

the stability and uniformity as to rates which the conferences seek to achieve.

That was testimony given before the House committee.

Of course, there is a certain amount of overlapping in the conference arrangements.

The Commission is now reviewing the Board-approved joint agreement between the Far East Conference (from U.S. Atlantic and gulf ports) and the Pacific Westbound Conferences (from U.S. Pacific ports) to China, Japan, and the Philippines. Under that joint agreement (FMB No. 8200) the two conferences agree upon the overland rates to be charged by the Pacific Westbound Conference and the rates from both Atlantic/Gulf and Pacific areas for commodities which are common to both areas. Under the Far East Conference/Pacific Westbound Conference joint agreement each conference retains the right of independent action. Therefore, under our amendment it is left to the Commission to determine, under the standards set forth in the legislation amended, whether to continue its approval of that and other joint agreements, and when and under what circumstances to approve new joint agreements.

In other words, the conference system is under precisely the same kind of regulation as any conference system. Each conference reserves to itself the right of independent action. It can get out if it wants to.

As I have emphasized, the proposal is not an authorization of something new. These interconference agreements, as Mr. Morse has stated, are necessary because there is a certain amount of overlapping in the conference trade areas. They have to comply with the same rules and regulations that are set up in the bill relating to conferences themselves. For that reason, and having in mind the previous action of the House committee, which rejected a similar amendment, and our consideration of it, I hope the Senate will not accept the amendment.

Mr. DOUGLAS. Mr. President, will the Senator yield so that I may ask the Senator from Tennessee some questions?

Mr. KUCHEL. I yield to the distinguished Senator from Illinois as much time as he desires.

Mr. DOUGLAS. I thank the Senator. I will be grateful if the Senator from Tennessee will reply to my questions.

As I understand it, at present there is a series of regional shipping cartels. Is that true?

Mr. KEFAUVER. Yes, there are approximately 110 shipping conference cartels serving the commerce of the United States.

Mr. DOUGLAS. Are these cut across national lines?

Mr. KEFAUVER. That is correct.

Mr. DOUGLAS. The agreements which they make are binding upon their members within the routes that they cover?

Mr. KEFAUVER. That is correct. Of course, they endeavor to bring the shippers and the consignees into agreements also.

Mr. DOUGLAS. I notice that the bill before us would permit agreements among and between cartels only if each conference retains the right of independent action. What does the proviso that, "Each conference retains the right of independent action" mean?

Mr. KEFAUVER. It means absolutely nothing. The phrase is completely meaningless. It would permit supercartels to exist as long as the member retained a theoretical right to disagree. In practice it would have no effect. They naturally would retain the right of independent action to get in. It appears to me that the phrase is for the purpose of diverting attention from the fact that all the large cartels would be authorized to get together in a supercartel. That phrase has no meaning whatsoever.

Mr. DOUGLAS. Would there be any limit on the number of cartels that could join in a supercartel under the bill?

Mr. KEFAUVER. All 110 of the cartels in the shipping of the United States could, under the bill, join together in a supercartel to fix rates for all foreign commerce. I wish to point out to the distinguished Senator that the rates would not be fixed by American companies or by any American regulatory body. In all 110 of the cartels, with but a handful of exceptions, the rates would be fixed by foreign-owned companies. The record will be found in the CONGRESSIONAL RECORD of yesterday on page 18167. I put the list into the RECORD. It shows that about 85 percent of the cartels are dominated by foreign lines. Because of this, most American shippers would be completely at the mercy of foreign cartels.

Looking at the list on page 18167, the Senator will find the very first one shown is the Associated Steamship Lines (Manila), 8 U.S.-flag members, 50 foreign-flag members.

Mr. DOUGLAS. Are votes in the cartels cast according to relative tonnage?

Mr. KEFAUVER. There are different ways. In some cases voting is by members, in others by relative tonnage, and still other methods are used. But it is conceded that control of the majority of the cartels—which would mean control of our international shipping—would necessarily be in the hands of foreign shipping interests. I am all for giving the foreign shipping interests a voice. I am all for doing well by our friends. Yet, it is undesirable to have one cartel dominated completely by foreign shippers. But, when we allow such cartels to join together in a supercartel of 110 cartels, dominated by foreign shipping interests, then indeed the American shipping lines would have substantially no voice whatsoever.

Mr. DOUGLAS. I have heard part of the address of the Senator from Tennessee today, and this morning I had occasion to read a portion of his very able speech of yesterday. Am I correct in the impression that the present rate structure on ocean shipping is one in which the rates from United States to foreign ports tends to be greater than the rates from those identical ports to the United States, thus placing American shippers

and exporters at a comparative disadvantage? Is that correct?

Mr. KEFAUVER. Yes. The rates on a great many commodities are very much greater from United States ports to foreign ports than they are from foreign ports to the United States. For purpose of reference, those facts will be found on pages 18187, 18190, and 18198 of the RECORD of yesterday.

I call the Senator's attention to some of the rates which affect shippers in the Midwest, particularly the rate on cheese, which was so ably discussed yesterday by the Senator from Wisconsin [Mr. WILEY]. That discussion appears on page 18198 of the CONGRESSIONAL RECORD of yesterday.

Mr. DOUGLAS. I observe that the export rate was \$6.38 per hundred-weight; the import rate \$3.84.

Mr. KEFAUVER. The Senator is correct. We find, for example, with respect to electric motors, the outbound rate is \$54 per short ton; inbound, \$39. On stainless steel, the rate is \$61.25 per long ton outbound; \$33 per long ton inbound.

Mr. DOUGLAS. May this differential rate in favor of foreign producers in the case of steel partially account for the fact that our steel manufacturers are complaining that they are being undersold in this country by the importation of German steel?

Mr. KEFAUVER. Undoubtedly it does. For example, the steel companies have said that part of the reason they have been losing their export trade is the excessive rates that are being charged for shipment outboard of steel as compared with the rates from Germany, England, Japan, and other countries.

There is a statement by an official of a steel company which I had printed in the RECORD of yesterday.

A great many justifiable complaints have been made in connection with this great and unjust disparity. This is also true in relation to shipments of chemicals from the United States to Germany and Germany to the United States. Our rate to Germany is many times what it is from Germany to the United States.

It is no wonder that we are having trouble with our exports. Yet under this system we would have no power to do anything about it, because conference cartels could join any international supercartel, and we would be completely at their mercy. In fact, we are practically at their mercy at the present time, with the cartels that are in effect. For instance, on page 18191 of yesterday's RECORD there is a statement which bears on steel. In a letter dated May 23, 1958, to Mr. Frank Slater, vice president of the American Export Lines, the Ore Navigation Co. of New York City stated:

It is quite generally known in all trades that present iron and steel rates from U.S. ports are unreasonably excessive in view of today's freight market, general cargo rates from Europe and the decline of steel shipments from here.

Of all the problems confronting steel exporters today, the primary obstacle to the recapturing of diminished markets and booking cargo again with the berth opera-

tors from our ports is the extreme inequality of berth rates (hearings, pt. 1, vol. V, at 4928; the Senator may desire to read further from this letter).

Mr. DOUGLAS. While the question of rates which were previously quoted applied to Japanese trade, it is instructive to notice the disparity with respect to German trade. On electric motors the rate from Chicago, Milwaukee, and Detroit per long ton is \$74.25, but from Bremen and Hamburg, identical ports, to Chicago, the rate ranges between \$48 and \$49 a ton, or \$25 a ton less.

Mr. KEFAUVER. That is correct. I said in my speech yesterday that there was such a great disparity in the rates from England and Germany to Greece in connection with electrical fixtures, electric stoves, freezers, and so forth, that we have lost much of our market in Greece because of the disparity in rates.

Mr. ENGLE. Mr. President, will the Senator yield for an observation?

Mr. KEFAUVER. I yield.

Mr. ENGLE. I wish to call attention to page 17 of the bill, which states:

The commission shall by order, after notice and hearing, disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this act, and shall approve all other agreements, modifications, or cancellations.

What I am saying is that what we have tried to do in the bill is to put the regulatory agency in a position to kick out these conferences if Americans are getting gouged. That is precisely what the language in the bill says. We understand about some of these rates. When these rates fall into the category referred to in the act, the commission has the right to disapprove of the conference and not permit the conference to operate. Joint conferences as well as single conferences must operate under these rules. We are not authorizing something to be done in the bill. As of October 1959, there were nine interconference agreements which had been approved by the Federal Maritime Board and its predecessors. We are not changing it. They have to meet the same rules that everyone else has to meet. Where the trade areas overlap, they can get an agreement if it falls within the limitations of this act.

Mr. KEFAUVER. There is nothing in the Shipping Act of 1916 that authorizes supercartels. They have been approved by commissions in the past, without authorization, on their own. Of course, with all due deference, some commissions before the previous one have not been very diligent in looking after the interests of the American shippers. The fact that they have approved them does not mean that they have been authorized. In any event, they are not a good thing for the United States. Furthermore, the bill does not anywhere mention the ability of the commission

to set aside any cartel because of the unfairness of rates. If the commission had been thinking about the shippers, why would they have permitted a situation such as that shown at page 18199 of the RECORD of yesterday. I call the Senator's attention to that page in the RECORD.

On chemicals, from Hamburg to New York, 82 cents per hundredweight. New York to Hamburg, \$6.61. Rotterdam to New York, 82 cents per hundredweight. New York to Rotterdam and Antwerp \$5.85. The record is filled with such examples which unfairly affect our trade. Yet they have been permitted by the commission to continue. This bill would perpetuate them so as to give them legality. If we think after we authorize them here, that some commission in the future, might knock out a conference because of unfairness of this kind, I wonder why they have not done so before.

Mr. DOUGLAS. Without reflecting in the slightest on the motives of the framers of the bill, would the Senator from Tennessee say it is designed primarily to protect the interests of the carriers and almost completely disregards the interests of the manufacturers and shippers?

Mr. KEFAUVER. That is my opinion about it. If this bill is used to the extent of the authorization contained in it, the shipper is at the complete mercy of the foreign shipping lines insofar as rates are concerned. It is true that in the bill there are some provisions that if something is adverse to the commerce of the United States, they may disallow participation by American shipping interests. However, I call attention to the fact that they have never knocked out a conference on account of rates. I also call attention to the fact that Mr. White, the Deputy Attorney General takes this authorization to task very vigorously. He says:

We urge the committee [Senate Commerce Committee] to delete the proviso (which would allow interconference agreements if the right of independent action were retained) thereby clearly prohibiting any interconference agreements. While the existing language of the bill gives a conference the right to take independent action on matters embraced within the agreement, it nevertheless permits all parties to an agreement to establish a uniform policy on rates and other competitive matters when it serves their purpose to do so. The Department of Justice is convinced that it is not in the public interest to permit agreements which may create a virtual monopoly of ocean transportation to or from this country. Congress should not sanction private rate-fixing schemes or supercartels which could embrace every port through which the foreign commerce of the United States is conducted. Such an arrangement would deny shippers the cost savings resulting from their location on or in proximity to a particular coastal range.

Mr. DOUGLAS. Mr. President, will the Senator further yield?

Mr. KEFAUVER. I yield.

Mr. DOUGLAS. Are there any geographical limits on the supercartels?

Mr. KEFAUVER. There are no geographical limits.

Mr. DOUGLAS. These could cover a very wide area?

Mr. KEFAUVER. They could cover the entire foreign shipping of the United States.

Mr. DOUGLAS. Are there any limitations on the subject matters which could be acted upon by a supercartel?

Mr. KEFAUVER. There are no limitations upon subject matters or upon the cargoes to be carried.

Mr. DOUGLAS. What is the economic reason for such a bill as this?

Mr. KEFAUVER. The only economic reason for allowing a super cartel is to allow existing cartels to further expand their monopoly power, both geographically and economically. This is a great bonanza to them.

Mr. DOUGLAS. I wonder if it would be improper for me to inquire of the distinguished Senator from California, who is in charge of the bill, what he regards as the economic justification for the bill.

Mr. ENGLE. The whole bill? Not this particular amendment?

Mr. DOUGLAS. The interconference agreements.

Mr. ENGLE. I read it just a few minutes ago. I think Mr. Morse, the former Chairman of the Federal Maritime Board, made that very plain. He said:

These interconference agreements are designed as a means of stabilizing rates in the respective trades, of protecting the competitive positions of the respective conferences, and of preventing interconference rate wars which deprive shippers and carriers alike of the stability and uniformity as to rates which the conferences seek to achieve.

Mr. DOUGLAS. Stripped of the fancy language, does not that mean that the interconference agreements can be used to prevent a lowering of rates by carriers in an effort to get trade; and therefore, are they not designed to stifle price competition?

Mr. ENGLE. The vast majority of the shippers of this country favor this legislation; they are not against it, and the dual rate system is a system under which shippers and a group of lines are authorized to get together to agree that if the shippers ship all or a substantial portion of their cargoes with the conference lines, they can get a lower rate—not a higher rate, but a lower rate.

The PRESIDING OFFICER. All time of the Senator from Tennessee has expired.

Mr. ENGLE. Mr. President, I will yield the Senator some of my time.

Mr. KEFAUVER. Will the Senator proceed on his own time?

Mr. BUTLER. Mr. President, will the Senator from California yield?

Mr. ENGLE. I yield.

Mr. BUTLER. I can understand the concern of the Senator from Illinois. The question he has propounded needs to be answered. The taxpayers spend more than \$300 million a year to provide for an American merchant marine. In my opinion, the only way in which that money can be effectively used is by the enactment of this bill thus preventing the rate wars which result in the absence of this legislation in the independent owners cutting rates.

Mr. DOUGLAS. Are rate wars bad?

Mr. BUTLER. Let me finish. A rate war creates monopoly.

We know that only the strong can survive a rate war. So the result of a rate war is the same thing the Senator is apparently opposed to. It drives out of business the companies which he seeks to protect. I call your attention to the fact that these owners don't operate on fixed routes or provide steady service. The American merchant marine cannot operate that way and hence the taxpayers' money will be wasted.

Mr. KEFAUVER. Mr. President, will the Senator from Maryland yield?

Mr. BUTLER. I yield.

Mr. KEFAUVER. The worst rate wars which we have had were when Isbrandtsen was causing a lot of competition. A reference to that may be found on page 18185. The American lines were making very good profits, even during the height of the rate war.

Mr. BUTLER. They were making good profits because there was enough business to warrant it. But now none of them is making money, and none can make money, unless some protection is afforded them through the dual-rate system.

Mr. KEFAUVER. They cut their rates by 30 percent, sometimes 40 percent. In 1958, the United States Lines made \$6 million.

Mr. BUTLER. I know of no American ship operator who is now cutting rates.

Mr. KEFAUVER. What does the Senator mean by "cutting rates"?

Mr. BUTLER. They are operating at conference rates.

Mr. KEFAUVER. The conferences have a monopoly, so they are making money by abiding by the monopoly rate.

Mr. BUTLER. Isbrandtsen does not have a monopoly. The court ruled that Isbrandtsen could charge lower rates, but Isbrandtsen is not charging lower rates; it is charging the conference rates.

Mr. DOUGLAS. I hold no brief for the Isbrandtsen Co., because certain of its transactions, as I remember them, were not very good. Nevertheless, was the situation that they made money while they were competing, and that the combined pressure of the cartels forced them into an agreement?

Mr. KEFAUVER. No; the Maritime Commission forced them into it. The Maritime Commission said it would not grant them a subsidy for a line they wanted to acquire unless they joined the conference.

Mr. DOUGLAS. In other words, the Maritime Commission used the threat of a withdrawal of subsidy to stabilize competition, and thus forced Isbrandtsen into the shipping cartel?

Mr. KEFAUVER. The Maritime Commission said, in effect, "Unless you join the conference, we will not grant you a subsidy."

Isbrandtsen is making money without a subsidy.

Mr. BUTLER. Isbrandtsen was not then entitled to a subsidy.

Mr. KEFAUVER. I must point out that subsidies are primarily determined by costs, not profits. Isbrandtsen was forced and pressured by the Maritime Commission to join the conference if it wanted to get a subsidy. That is in the

record. That is in a statement made by the former Chairman of the Maritime Commission.

Mr. BUTLER. Does the Senator know of any way in which the investment of the taxpayers in the American merchant marine can be protected, and still prevent price wars, which the Senator must realize creates a monopoly, without a conference system?

Mr. KEFAUVER. The Senator asked me a question. I should like to answer the question. Of course I know a way.

Mr. BUTLER. What is the way?

Mr. KEFAUVER. Conferences, or even some dual rates, are not outlawed now. They are not outlawed under the House bill—quite the contrary. What is needed is simply some minimum limitations to afford some kind of protection to shippers and to independent lines, as are contained in the House bill.

Mr. BUTLER. The House bill would make it completely impossible to operate a dual-rate system.

Mr. KEFAUVER. Just a minute. If carriers do not want to operate without operating in a cartel or a collusive manner, they can do so now. They can operate under dual rates. But what is involved here is not merely allowing them to operate in a conference. What is involved in the amendment now before the Senate is allowing all the conferences to get together in one great big cartel, without any justification whatsoever.

Mr. BUTLER. But under the control of the Maritime Commission.

Mr. KEFAUVER. Under the control of the Commission, but not as to rates.

Mr. ENGLE. I yield to the Senator from Kentucky.

Mr. MORTON. Mr. President, my interest in the bill is primarily on behalf of shippers. I have had some experience in shipping merchandise in the export trade. If one attempts to build a brand business of any kind, it is necessary to have a steady rate structure.

The Senator from Illinois [Mr. Douglas] asked about the economic justification for the bill. I think it is in the interest of shippers. It is not possible to build a business when rates are jumping around, uncontrolled, and low when bottoms are available, but high when space is tight.

I observe in the Chamber the distinguished Senator from West Virginia [Mr. Byrd], who shares an interest with me in the export of coal products. He will well remember that when we were Members of the House a few years ago, we sought the development of a coal business in Western Europe. We were getting attractive rates. As soon as the coal began to move and the shippers were getting the business, up would go the rates.

Coal is not an item which lends itself to conference shipping, because coal is a hard, dirty product to transport overseas.

To prevent that constant fluctuation, which meant that after a business had been established and was going well, such a fluctuation in the rates would drive the business out of the market within perhaps 2 months, the coal ship-

pers and producers incorporated a company to provide shipping for coal at a constant rate. Then the tramps fell into line; they had that as a guideline. So we had guidance and stability of rates on coal.

I have heard from many shippers and shipping associations in connection with this bill, first, as it came from the committee, and, this morning, in connection with the amendments submitted by the Senator from Tennessee. They are unanimous in urging the rejection of the amendments of the Senator from Tennessee—those of a more substantive nature; and they are unanimous in urging the passage of the bill as it has been reported by the committee. That is what the shippers want; and they include those who ship chemicals, and include the Spencer Chemical Co., which has headquarters and branches in my State.

At one time, when I was in the grain and milling business, we developed an overseas business on a brand-name product we had developed, called Afrecho. We developed a substantial business for it in Latin America and in certain areas of Africa. But we never could have done that in the absence of a constant rate. Without a constant rate, it would have been impossible to have developed that business.

So I think an important consideration in this case is the American shipper; and I believe it will be found that 90 or 95 percent of the American shippers and 90 or 95 percent of the American shipping associations favor the bill as reported by the committee.

Mr. ENGLE. Mr. President, I should like to add to what the Senator from Kentucky has said, by stating that these are common carriers, and they have regular routings and scheduled service. That is why since 1877 there have been these conference agreements. There have been many investigations of the shipping industry internationally. In 1906, the British Royal Commission studied this matter. In 1912, the Alexander Committee, of the House of Representatives, studied it. It was studied also in connection with the Shipping Act of 1916; and it was studied again, very exhaustively, in connection with the Merchant Marine Act of 1936. And since the Isbrandtsen case of 1958, hearings have been going on for a period of 2 years, and have involved some 13,000 pages of testimony.

The unanimous conclusion in connection with every one of those studies, made over a period of more than 50 years, is that the conference system is absolutely essential to the stability of such rates.

In the decision in the Isbrandtsen case, it was held that an American shipper could not enter such an agreement because that would violate the antitrust laws. On three different occasions since 1958, Congress has taken action in connection with a moratorium; and the rest of the conference systems—and, as the Senator from Tennessee has said, there are approximately 113 of them—have continued in operation during this interim period, while we have been trying to achieve a permanent solution.

This bill authorizes the conference system, but requires the conferences to comply with very rigid requirements. If they do not, the Maritime Commission will order the American lines out of the conference system.

The pending amendment would make it impossible for the conferences themselves to get together and agree with respect to matters on which they overlap. As I have pointed out, nine of those interconference agreements were in existence in 1959. There may be more now. But in any case, they are under precisely the same kind of requirement as the one which, by means of this act, the conferences themselves are under. Moreover, we provide that any conference must be able to act independently; that is, if it wishes to get out, it must be able to do so.

Mr. MANSFIELD. Mr. President, will the Senator from California yield?

Mr. ENGLE. I yield.

Mr. MANSFIELD. On the question of agreeing to the amendment of the Senator from Tennessee, I ask for the yeas and nays.

Mr. KEFAUVER. I wish to have a quorum call.

Mr. MANSFIELD. Let us get the yeas and nays ordered, first.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays were ordered.

Mr. KEFAUVER. I should like to have a quorum call.

Mr. MANSFIELD. Mr. President, if the Senator from California will yield for that purpose, I suggest the absence of a quorum.

Mr. ENGLE. I yield for that purpose, and then I yield back the remainder of the time available to me.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time required for the quorum call be outside the controlled time.

The PRESIDING OFFICER. Without objection, it is so ordered.

All remaining time on the amendment of the Senator from Tennessee has been yielded back.

The absence of a quorum has been suggested; and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I yield myself 1 minute on the bill for the purpose of a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. What is the legislative situation at the moment?

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee.

Mr. MANSFIELD. Will the Chair have the amendment read to the Senate?

The PRESIDING OFFICER. The amendment will be read by the clerk.

The LEGISLATIVE CLERK. On page 18, lines 9 and 10, after the words "naturally competitive", it is proposed to strike out

"unless each conference retains the right of independent action".

Mr. MANSFIELD. Mr. President, has all the time on this amendment been used up?

The PRESIDING OFFICER. All time has been yielded back.

Mr. MORTON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MORTON. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the amendment of the Senator from Tennessee.

Mr. KEFAUVER. Mr. President, will the Senator yield me 3 minutes on the bill?

Mr. MANSFIELD. I yield the Senator from Tennessee 3 minutes on the bill.

Mr. KEFAUVER. Mr. President, the basic proposition here is simply this: The conference cartels are 85 percent under the control of foreign shipping lines. In some 13 cartels there is not even an American line in the cartels. Discriminatory rates, adverse to the commerce of the United States, are rampant. Sometimes they charge as much as five or six times more for shipments from United States to foreign ports as they charged for shipments from foreign ports to the United States. U.S. manufacturers of steel, chemical, and agricultural products, among other products, are adversely affected.

This bill would authorize the 110 cartels to operate independently. What the Senate version of the bill is attempting to do is authorize all of them to get together in a super cartel, so that any area of the country that has an advantage will lose that advantage, and so the cartels can fix the rates for larger and larger geographic areas.

It is bad enough to have cartels, to begin with, particularly when they are under the domination of interests that may be inimical to the interests of the United States, but to allow both foreign carriers and U.S. carriers to get together in a super, all-encompassing cartel, and eliminate all competition by allowing them to make agreements among themselves, is outrageous and preposterous, in my opinion.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HAYDEN (when his name was called). On this vote I have a pair with the senior Senator from Oregon [Mr. MORSE]. If he were present and voting he would vote "yea." If I were at liberty to vote I would vote "nay." I withhold my vote.

The rollcall was concluded.

Mr. HUMPHREY. I announce that the Senator from Oklahoma [Mr. KERR], the Senator from Oregon [Mr. MORSE], the Senator from West Virginia [Mr.

RANDOLPH], the Senator from Missouri [Mr. SYMINGTON], the Senator from Texas [Mr. YARBOROUGH], the Senator from Tennessee [Mr. GORE], the Senator from Alaska [Mr. GRUENING], and the Senator from Wyoming [Mr. HICKEY] are absent on official business.

I also announce that the Senator from New Mexico [Mr. CHAVEZ] is absent because of illness.

I further announce that, if present and voting, the Senator from West Virginia [Mr. RANDOLPH] would vote "yea."

On this vote, the Senator from New Mexico [Mr. CHAVEZ] is paired with the Senator from Tennessee [Mr. GORE]. If present and voting, the Senator from New Mexico would vote "nay," and the Senator from Tennessee would vote "yea."

On this vote, the Senator from Oklahoma [Mr. KERR] is paired with the Senator from Alaska [Mr. GRUENING]. If present and voting, the Senator from Oklahoma would vote "nay," and the Senator from Alaska would vote "yea."

Mr. KUCHEL. I announce that the Senator from Colorado [Mr. ALLOTT] is absent by leave of the Senate to attend the Interparliamentary Conference in Brussels.

The Senator from New Hampshire [Mr. BRIDGES] is absent because of illness.

The Senator from Indiana [Mr. CAPEHART], the Senator from Nebraska [Mr. CURTIS], the Senator from Illinois [Mr. DIRKSEN], and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

The Senator from Iowa [Mr. MILLER] is absent on official business.

The Senator from Texas [Mr. TOWER] is absent by leave of the Senate on official business.

If present and voting, the Senator from Colorado [Mr. ALLOTT], the Senator from Indiana [Mr. CAPEHART], the Senator from Iowa [Mr. MILLER], the Senator from Texas [Mr. TOWER], and the Senator from Illinois [Mr. DIRKSEN] would each vote "nay."

The result was announced—yeas 28, nays 54, as follows:

[No. 201]

YEAS—28

Anderson	Hart	Neuberger
Burdick	Humphrey	Pastore
Cannon	Javits	Pell
Carroll	Kefauver	Proxmire
Case, S. Dak.	Long, Mo.	Smith, Mass.
Church	Mansfield	Talmadge
Clark	McGee	Wiley
Cooper	McNamara	Young, Ohio
Dodd	Moss	
Douglas	Muskie	

NAYS—54

Aiken	Fong	Metcalfe
Bartlett	Fulbright	Monroney
Beall	Hartke	Morton
Bennett	Hickenlooper	Mundt
Bible	Hill	Prouty
Boggs	Holland	Robertson
Bush	Hruska	Russell
Butler	Jackson	Saltonstall
Byrd, Va.	Johnston	Schoeppel
Byrd, W. Va.	Jordan	Scott
Carlson	Keating	Smathers
Case, N.J.	Kuchel	Smith, Maine
Cotton	Lausche	Sparkman
Dworshak	Long, Hawaii	Stennis
Eastland	Long, La.	Thurmond
Ellender	Magnuson	Williams, N.J.
Engle	McCarthy	Williams, Del.
Ervin	McClellan	Young, N. Dak.

NOT VOTING—18

Allott	Goldwater	Miller
Bridges	Gore	Morse
Capehart	Gruening	Randolph
Chavez	Hayden	Symington
Curtis	Hickey	Tower
Dirksen	Kerr	Yarborough

So Mr. KEFAUVER's amendment was rejected.

Mr. ENGLE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. KUCHEL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATOR FRANK CARLSON AND
SENATOR CLINTON P. ANDERSON

Mr. MANSFIELD. Mr. President, a few days ago Senators were pleased to note the return of our distinguished friend, the Senator from Kansas [Mr. CARLSON]. He came back looking better, trimmer, and more in line with the way he should carry himself than he ever did before. We are delighted that he is with us, that he is in the best of health, and we, of course, hope that he will be with us for many years to come.

Today another Member of the Senate, who has been undergoing a serious operation, has returned. I refer to the distinguished Senator from New Mexico [Mr. ANDERSON.] Like his colleague from Kansas, he has lost a little weight—7 pounds, I believe. He looks better, and more trim, and we are delighted to have him back. On behalf of my distinguished colleague, the acting minority leader, and the Senate as a whole, I wish to say that we are happy that both these Senators are back, and will be with us for the remainder of the session and many sessions to come.

[Applause.]

AMENDMENT OF SHIPPING ACT OF
1916

The Senate resumed the consideration of the bill (H.R. 6775) to amend the Shipping Act of 1916, as amended, to provide for the operation of steamship conferences.

Mr. KEFAUVER. Mr. President, I call up my amendments 9-1-61—C, D, and E, and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The clerk will state the amendments.

The LEGISLATIVE CLERK. On page 14, line 19, after the word "thereof," it is proposed to insert "is intended or will be reasonably likely to cause the exclusion of any other carrier from the trade, or".

On page 16, line 11, after the word "contract" it is proposed to insert "tends to cause the elimination from, or prevent the entry into the trade of any carrier, or".

On page 18, line 16, after the word "withdrawal", it is proposed to insert ", or (3) the probable effect of which will

be reasonably likely to exclude any carrier from any trade".

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from Tennessee.

Mr. KEFAUVER. Mr. President, by the rejection of the last amendment, 110 steamship cartel conferences, about 85 percent of which are completely dominated by the superior number of foreign ships in the conferences, will be able to regulate and determine the tariff rates and conditions of American trade. In other words, as it now stands, the bill could place our American trade completely in the hands of foreign shipowners. They can operate by cartel either separately in each of the separate trades or they can operate on an international agreement in which all trades will be joined.

The American shipper and the American commission has no regulation over the rates charged by foreign shipowners. Judging from past experience, our loss of foreign trade has been due, to a very large extent, to the discrimination in rates on goods or merchandise shipped from the United States to ports in Europe and other places as compared with the rates charged for shipment of goods from Europe and other places to the United States.

Yesterday the distinguished Senator from Wisconsin [Mr. WILEY] had printed in the RECORD some examples of those rates, which Senators will find at page 18198.

Yesterday the distinguished Senator from Wisconsin [Mr. WILEY] had printed in the RECORD some examples of those rates, which Senators will find at page 18198. It is shown there that on cheese shipped from Wisconsin to Denmark the rate is twice what it is from Denmark to Wisconsin. On chemicals it is about seven times greater from the United States to foreign ports than from foreign ports to the United States. Senators will find, by looking at those figures, that on steel it is about twice. Our companies have to pay twice as much to get steel to Europe as European steel companies have to pay to get steel to the United States. The same thing is true all the way up and down the line.

There is no wonder why our export business has been falling. There is no wonder why our gold balance has been depleted. There is no wonder there is massive unemployment in the United States. There is no wonder all these things are true in the face of that kind of situation. In part because of them American industry has a very hard time competing.

American agriculture has a very hard time competing internationally, because of this great differential in rates. It is hard to find an instance where it costs more to ship anything from England to the United States or from Germany to the United States. But, the rate is often anywhere from twice to even seven or eight times greater when something is shipped from the United States to a foreign port than it is when the goods are shipped from abroad to the United States. And, these rates are virtually completely controlled by the conferences.

The Senate rejected an amendment which would have knocked out international cartels which are 70 percent to 90 percent dominated by foreign groups. We are about to place our export and import business, so far as rates are concerned, in the hands of foreign shipping lines, with almost no restraint whatever. I am all in favor of our foreign neighbors. I have voted for foreign aid. However, I do not want them at this time to act unfairly against the United States or have unduly great power.

Another point is that they use different kinds of predatory practices. They grant one rate to a corporation and another rate to another corporation. They grant rebates, in spite of the fact that the Shipping Act of 1916, section 14(2) prohibits secret rebates. They use fighting ships in foreign ports. They use any kind of discrimination in order to get business.

There is nothing in the bill that gives the Maritime Commission any right whatever to do anything about these rates. The fact that unfairly discriminatory rates have been in existence for all this time shows that they are not likely to do anything about it. It is bad enough to have a cartel of this kind, and there may be some justification for some kind of agreement, but there ought to be some reasonable antitrust restriction, some reasonable ceiling to protect the American shipper, some reasonable limitation to protect the independent steamship lines and tramp steamers.

The three amendments I have offered were contained in the House bill. Congressman BONNER's subcommittee, after a long and extensive hearing, decided unanimously that they were in the public interest and gave some protection to the independents. This was the conclusion also of the Antitrust and Monopoly Subcommittee headed by Congressman CELLER. I wish to point out that these two subcommittees held very long and extensive hearings on this whole question. The bill passed the House unanimously. The provisions were deleted by the Senate Commerce Committee.

Amendment C, my first amendment, provides that the Commission may not permit any dual-rate agreement to go into effect that is intended or will be reasonably likely to cause the exclusion of any other carrier from the trade.

The next amendment, which is grouped with the three I have offered, provides for the withdrawal by the Commission of approval which it had previously granted, if the agreement tends to cause the elimination or prevents the entry of a carrier into the trade.

Amendment E provides that with respect to any other cartel agreement, no approval by the Commission shall be granted if its probable effect would be reasonably likely to exclude any carrier from any trade.

The Department of Justice is very strongly in favor of this amendment. The Attorney General wrote to the House committee and to the Senate committee, they have testified on this point at several congressional hearings, and they have written me that it would be a catastrophe to pass this bill without any antitrust protection in it, and that it would

put us completely at the mercy, so far as the foreign trade is concerned, of international cartels over which we have no control.

The Attorney General in the letter to Chairman BONNER said:

The deletion of this provision would seem in effect an attempt to reverse the rule of the Isbrandtsen case. In the opinion of the Department of Justice this provision was an indispensable and a reasonable enactment on this subject, and the public interest would be disregarded were this to be omitted.

Mr. McNAMARA. Mr. President, will the Senator yield?

Mr. KEFAUVER. I am very happy to yield.

Mr. McNAMARA. I am a little bit confused by the term "independent carrier." Is that the term the Senator used?

Mr. KEFAUVER. Yes.

Mr. McNAMARA. What is the significance of that term?

Mr. KEFAUVER. In the business today there are so-called conference carriers, who join together into cartels. What is desired by the conference is that all the business be gotten by conference carriers. There are at least 26 trades, however, in which independent carriers compete with the conferences. The independent may try to get some of the business and offer a little competition. That is what I mean by "independent." The proponents of the bill would eliminate the independent, and they make no bones about it that the purpose of the dual rate system and of the bill is to eliminate independent carriers from the business.

In the business there are also certain tramp steamers, which go from port to port, not on any schedule. The purpose of the bill is also to put the squeeze on tramps, by foreclosing them from the business tied up by the conference, dual rate, exclusive dealing contracts.

Mr. McNAMARA. Does the term "independent" generally refer to a U.S. carrier?

Mr. KEFAUVER. It covers both foreign and U.S. lines. There are 26 American shipping lines independently competing with conference cartels. Without the amendments I have proposed, the commission could approve a conference that intends to put them completely out of business. That is, they could approve a conference even though it was intended that the purpose of the conference was to eliminate an independent shipping line.

Mr. McNAMARA. Mr. President, will the Senator yield further?

Mr. KEFAUVER. I yield.

Mr. McNAMARA. Was there not a Supreme Court decision on this matter? Is the purpose of the bill to upset the Supreme Court decision?

Mr. KEFAUVER. The Isbrandtsen decision was delivered in 1958. All it held was that in that case the dual-rate contract involved therein had the effect of discriminating against the Isbrandtsen Shipping Co. The Court held it was in violation of section 14(3) of the Shipping Act of 1916.

The purpose of the pending bill is to go further than the Isbrandtsen decision. The purpose is to knock out all

antitrust restraints and to allow super-international cartels, dominated by the foreign shipping lines, to regulate the export-import trade of the United States.

Mr. DOUGLAS. May I inquire whether the American Export Lines can be classified as independent?

Mr. KEFAUVER. They are in at least one conference, but they also have some trades in which they are independent. The same is true of most of the other 26 independent American lines.

Mr. DOUGLAS. Are the passenger operations of the American Export Lines in the conference, or are they independent?

Mr. KEFAUVER. Some of the passenger lines are in the conference; some are not. The foreign carriers have an unrestricted monopoly power within their grasp.

I have said that the Department of Justice is very much opposed to removing the antitrust protections, which are a minimum. Also, the Department of Agriculture has always felt that it is in the interest of American agriculture that there be some antitrust protection. That Department is flatly opposed to removing the antitrust provisions.

If the independents and the tramp steamers are eliminated, then the international cartel, controlled by foreign shipping interests, will be a complete monopoly, with no one else in the picture at all to offer competition to the conference. That is unthinkable. If we permit the cartel to be established, which will result in the elimination of independents and of competition, our exports will go down and down, even more than they have diminished during the last few years.

Mr. CARROLL. Mr. President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield.

Mr. CARROLL. If the Senate should accept the amendment now offered by the Senator from Tennessee, where would the authority or the power be lodged to protect the shipper and the consumer? Would it be in the Maritime Commission?

Mr. KEFAUVER. Such little power as there would be, would be lodged in the Maritime Commission, but the Commission could do nothing about setting rates or monopoly. The Maritime Commission would have to approve the conference, even though the purpose of the conference is to put the independent carriers out of business. The control, as the bill now stands, unless we put some brakes on it, would be in the international shipping conference cartels.

If the Senator will look at the list I placed in the RECORD yesterday, he will see that in some of these cartels there is not even one American shipping line. The United States is outnumbered 3 to 1, 10 to 1, and 20 to 1. When they are all joined together, the American shipper will have no say whatsoever. The list I referred to will be found on page 18167 of the RECORD. I wish Senators would observe the disparity between the large number of foreign shipping lines and the number of American-ship lines.

Mr. CARROLL. The Senator from Tennessee knows that this is a complex piece of proposed legislation. Many Senators have said to me that they do not quite comprehend its meaning. I am endeavoring to put some questions to the Senator, so that I and other Senators may understand the purpose of the proposed legislation.

Mr. KEFAUVER. The junior Senator from Colorado already understands it. I know from my conversations with him that he does. That is why he favors the amendments.

Mr. CARROLL. I appreciate that statement. I favor the amendments, because I have great confidence in the experience, integrity, and ability of the Senator from Tennessee. He is a great Senator and one of the country's most eminent fighters for the preservation of our antitrust statutes.

If the Senate passes the bill today, what will be the effect upon the Attorney General's Office, upon the Department of Justice, and especially upon those who have been confirmed in positions in the Department by the Senate itself to enforce the antitrust statutes?

Mr. KEFAUVER. A great and important segment of our economy will be completely deprived of any antitrust protection, so that no matter how rampant the discrimination, no matter how predatory or unfair the conference may be as to the American independent carriers, the steamship lines will be effectively immune from the antitrust laws.

Mr. CARROLL. When I asked the Senator from Tennessee how much jurisdiction would now be lodged in the Maritime Commission, he replied that the Commission would have little authority. It is my opinion that the Maritime Commission today has almost no power over the reasonableness of rates in foreign commerce.

Mr. KEFAUVER. It has no power, and the bill gives it no power.

Mr. CARROLL. Madam President, how much time does the Senator from Tennessee have remaining? I should like to propound a series of questions to him.

Mr. KEFAUVER. Madam President, how much time have I remaining?

The PRESIDING OFFICER (Mrs. NEUBERGER in the chair). The Senator from Tennessee has 10 minutes remaining.

Mr. KEFAUVER. The Senator from Colorado may take all the time in speaking or asking questions.

Mr. CARROLL. I thank the Senator from Tennessee.

We know the position of the Department of Justice and of the Antitrust Division. What is the position of the Department of Agriculture on the proposed legislation?

Mr. KEFAUVER. The Department of Agriculture apparently feels that the bill will adversely affect the farmers of the Nation unless antitrust provisions are included. They know that the passage of the bill in the present form will mean higher shipping rates and the elimination of competition. Representatives of

the Department of Agriculture have so testified before the Bonner committee. They even intervened in the Isbrandtsen case to say that what was sought to be done, namely, to put a competitor out of business, should not be allowed.

So the bill in its present form will hurt the farmers. The farmers in the State of the distinguished senior Senator from Wisconsin [Mr. WILEY], where the dairy farms are located, will have to continue paying twice as much to ship their cheese to Denmark as the farmers of Denmark would have to pay to ship their cheese to Wisconsin. The farmers of Michigan will be in the same situation. The situation will be worse if my amendment is not adopted.

Mr. CARROLL. I have before me a document entitled "Statement of Joseph Campbell, Comptroller General of the United States, Before the Antitrust Subcommittee of the Committee on the Judiciary, House of Representatives, March 15, 1961." It is an extensive document, containing numerous pages. However, it relates in great detail how the Government of the United States has been milked—I do not say "bilked," but "milked"—out of an amount in excess of \$300,000.

Mr. KEFAUVER. "Defrauded" might be a better word.

Mr. CARROLL. I used the word "milked" because it is not really a defrauding, in a sense, because the conference is permitted to charge its rates, and there is no regulation of them.

Mr. KEFAUVER. That is correct.

Mr. CARROLL. In fraud, there is some conniving, some secrecy; but in the shipping conferences the rates are fixed openly, and there is no regulation.

That leads me to the next question. I read in the Washington Post of Sunday, April 2, 1961, an article entitled "Major Shakeup Being Planned for Ships Unit," written by Bernard D. Nossiter. If the Senator has time remaining, I should like to read, with his permission, some excerpts from the article.

First, Madam President, I ask unanimous consent that the entire article be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Apr. 2, 1961]
MAJOR SHAKEUP BEING PLANNED FOR SHIPS UNIT

(By Bernard D. Nossiter)

White House aids are preparing a major reorganization of the Federal Maritime Board. The proposed changes stem from a House inquiry which turned up scores of alleged law violations by shipping lines.

The plan, congressional sources reported, would separate the Maritime Board's promotional and regulating tasks.

It would set up two agencies in place of the existing structure. One agency would hand out subsidies and carry on other tasks that nurture the shipping lines. The second would oversee the industry's rate-fixing agreements and police its practices.

LANDIS DESIGNING PLAN

James M. Landis, Special Assistant to the President for regulatory agencies, is understood to be working on the two-agency plan.

If President Kennedy approves it and neither House rejects it, the plan would go into effect automatically.

At present, the three-man Maritime Board is responsible for both promotion and regulation of the shipping lines. Its Chairman, Thomas E. Stahem, also runs the Maritime Administration, which is essentially concerned with promotion tasks. Because of the overlap, critics have charged that the Board has virtually abdicated its regulating job and devoted its energies to assisting the industry.

The reorganization proposal is an outgrowth of an inquiry by Chairman EMANUEL CELLER, Democrat of New York, of the House Antitrust Subcommittee. CELLER has consulted with Landis and the plans Landis is studying embody CELLER's ideas.

CELLER began looking into the shipping lines and the Maritime Board in the fall of 1959. He found 210 apparent violations of Federal laws. His committee accused the Maritime Board of incredible neglect and laxity.

CELLER's findings have prompted the Justice Department to set up a grand jury investigation here. The grand jury was stymied for 8 months by the shipping companies' attempts to challenge its jurisdiction.

The typical case of neglect that was cited involved secret pacts between shipping companies that favored some shipping and were designed to drive competitors out of business.

Under the Shipping Act, the lines are allowed to get together to set cargo rates. But they must get Maritime Board approval for their "conferences." The Board is supposed to prohibit agreements that discriminate unfairly among shipping lines, shippers, and ports, and that harm U.S. trade.

CELLER's investigators discovered about 40 agreements that were never submitted to the Board. They also learned that the Board had never over 44 years assessed a penalty when it had found violations.

OVERCHARGE UNCOVERED

One bonus for taxpayers from CELLER's inquiry came to light earlier this month. Comptroller General Joseph Campbell told CELLER his investigators have already found two shipping lines that overcharged the Government \$305,000 for transporting foreign aid grain. Campbell noted that this finding stemmed from a look at just one commodity shipped between U.S. gulf ports and Germany.

Congressional investigators expect Campbell's men will find many more instances of overcharge. The Government is now deciding whether to claim just the \$305,000 or \$610,000 as double damages under the False Claims Act.

While the grand jury's deliberations are secret, the Justice Department has given CELLER a glimpse of what its investigation might produce. W. Wallace Kirkpatrick, first assistant in the Antitrust Division, said there is evidence that several companies waged fake rate wars from 1953 to 1958.

The purpose of this pretended competition, Kirkpatrick said, was to influence a pending Supreme Court decision on shipping rates. While the companies pretended to compete, Kirkpatrick revealed, there is evidence that they made a secret deal to divide up the available business. The alleged ruse failed when the Supreme Court ruled against the companies.

WOULD REDUCE CONFLICT

The two-agency solution is designed to help solve the problem of the Board's built-in conflict. In its promotion role—it gave away \$290 million in subsidies last year—it is mandated to help the shipping lines.

At the same time, it is supposed to police them in the interests of consumers and shippers, although of the Board's 2,765 em-

ployees, only 52 now have a full-time policing job.

Mr. CARROLL. Madam President, the article begins:

White House aids are preparing a major reorganization of the Federal Maritime Board. The proposed changes stem from a House inquiry which turned up scores of alleged law violations by shipping lines.

I call this portion of the article particularly to the attention of the Senator from Tennessee:

The plan, congressional sources reported, would separate the Maritime Board's promotional and regulating tasks.

It would set up two agencies in place of the existing structure. One agency would hand out subsidies and carry on other tasks that nurture the shipping lines. The second would oversee the industry's rate-fixing agreements and police its practices.

I am now reading excerpts from the article:

The reorganization proposal is an outgrowth of an inquiry by Chairman EMANUEL CELLER, Democrat, of New York, of the House Antitrust Subcommittee. CELLER has consulted with Landis and the plans Landis is studying embody CELLER's ideas.

Madam President, I think Senators have missed this point; there has not been enough time to develop this concept:

CELLER began looking into the shipping lines and the Maritime Board in the fall of 1959. He found 210 apparent violations of Federal laws. His committee accused the Maritime Board of incredible neglect and laxity.

CELLER's findings have prompted the Justice Department to set up a grand jury investigation here. The grand jury was stymied for 8 months by the shipping companies' attempts to challenge its jurisdiction.

Madam President, Senators should note the following:

The typical case of neglect that was cited involved secret pacts between shipping companies that favored some shipping and were designed to drive competitors out of business.

Under the Shipping Act, the lines are allowed to get together to set cargo rates. But they must get Maritime Board approval for their "conferences." The Board is supposed to prohibit agreements that discriminate unfairly among shipping lines, shippers and ports, and that harm U.S. trade.

I ask the Senator from Tennessee to pay particular attention to the following:

CELLER's investigators discovered about 40 agreements that were never submitted to the Board. They also learned that the Board had never over 44 years assessed a penalty when it had found violations.

But now it is proposed that the Commission be given greater power; and it is proposed to take away whatever restraining influence there has been in connection with presenting such matters to a grand jury, under the antitrust laws.

Mr. KEFAUVER. Let me state that under the 1916 act, as well as under other statutes, there are some minimum restraints against discrimination. But unless my three amendments are adopted, those minimum restraints will be done away with.

Mr. CARROLL. That is what Senators should understand. It is unfortunate that so few Senators are on the

floor at this time, in the closing days of the session, when so complex a bill is under consideration. It should be debated at length; and I commend the Senator from Tennessee for stimulating the debate on this important matter.

I read another paragraph of the article:

OVERCHARGE UNCOVERED

One bonus for taxpayers from CELLER's inquiry came to light earlier this month. Comptroller General Joseph Campbell told CELLER his investigators have already found two shipping lines that overcharged the Government \$305,000 for transporting foreign-aid grain. Campbell noted that this finding stemmed from a look at just one commodity shipped between U.S. gulf ports and Germany.

Mr. KEFAUVER. They charged the Government that much more than they charged the private shippers.

Mr. CARROLL. Exactly; and the Comptroller General noted that his findings related to only one commodity shipped between U.S. gulf ports and Germany.

Of course, Madam President, all of us tend to consider such matters from the point of view of our constituents. The wheat farmers in Colorado depend substantially on sale of our Hard Red Winter wheat to foreign customers in Japan, Europe, and South America. Therefore, I considered offering an amendment relating to wheat and other grains produced in Colorado and shipped abroad from Colorado. However, I understand that the bill exempts bulk cargoes from the dual-rate systems. I know that this does not completely protect our Colorado farmers, so I ask the Senator from Tennessee to tell the Senate how agricultural products are at a disadvantage if the shipping conferences have unrestricted privileges to fix rates and force shippers to ship farm products on cartel lines?

Mr. KEFAUVER. Agricultural products are put at a disadvantage because they are shipped very largely by independents or by tramps, inasmuch as it is not necessary that such cargoes arrive on quick schedules. The bill gives greater strength to the conference cartels to extend their monopoly power. As this is done, of course, the independents and the tramps will be squeezed out of business. Dual-rate contracts, which are nothing but exclusive dealing contracts, accelerate this process by foreclosing independents and tramps from business which was formerly theirs. The intent of these conferences and of these contracts is to eliminate competition—and this is their effect. Thus, when competition is eliminated, the cartels are free to inflate their prices and reap monopoly profits. Wheat farmers who are among the major groups of ocean shippers will be forced to pay these monopoly prices even though the bill exempts bulk cargo.

In this connection, I wish Senators would examine page 1898 of the hearings, which relates to the discriminations between American shippers, both exporting and importing. But what would happen to them if these antitrust law provisions were no longer applicable?

Mr. CARROLL. Let me say that as I understand the bill, its provisions are intended either to weaken or to eliminate competition. Is that true?

Mr. KEFAUVER. Expressly so. That is clearly implied in the report. The members of the committee make few bones about the fact that they want to drive everyone out of business except those who join the cartel.

Mr. CARROLL. Madam President, I read further from the article by Mr. Nossiter:

While the grand jury's deliberations are secret, the Justice Department has given CELLER a glimpse of what its investigation might produce. W. Wallace Kirkpatrick, first assistant in the Antitrust Division, said there is evidence that several companies waged fake rate wars from 1953 to 1958.

The purpose of this pretended competition, Kirkpatrick said, was to influence a pending Supreme Court decision on shipping rates. While the companies pretended to compete, Kirkpatrick revealed, there is evidence that they made a secret deal to divide up the available business. The alleged ruse failed when the Supreme Court ruled against the companies.

The PRESIDING OFFICER. All time under the control of the Senator from Tennessee has expired.

Mr. CARROLL. I apologize to the Senator from Tennessee for taking his time.

Mr. KEFAUVER. I am sorry I have no more time to yield.

Mr. ENGLE. Madam President, the amendment of the Senator from Tennessee would insert the following words in three places in the bill: "is intended or will be reasonably likely to cause the exclusion of any other carrier from the trade."

The committee's objection to the amendment is that such language would destroy the bill; if such language were included in the bill, we might just as well not have any bill at all.

Mr. KEFAUVER. Madam President, will the Senator from California yield?

Mr. ENGLE. Not at the moment, Madam President; I shall yield a little later.

As I was saying, this amendment of the Senator from Tennessee would, if included in the bill, destroy it, because by means of this bill we are authorizing a conference system; and a conference system has a tendency to eliminate and reduce competition. We know that. That is precisely what we are doing.

But this amendment would make us march right down the hill again and deauthorize the conference system. If there is any question about that in the mind of any Senator, let me read from the record. We get along fine on the question of whether the Congress wants a conference system and wants to have a modified operation of a system which has been in operation for almost 100 years. That is the basic issue. So this amendment goes directly to the vitals of this proposed legislation; and if the amendment were adopted, we might just as well throw the bill into the ashcan. Let me go back over the testimony, so we can be perfectly clear as to what we are doing.

If Senators will look at the report, beginning with page 21, they will be able to follow the language to which I am referring.

The record of the House and of our own hearings revealed "overwhelmingly that every effective dual-rate contract used by a conference is intended, and reasonably likely, and tends to cause nonconference lines either to join the conference using the contractor to leave the trade for happy hunting elsewhere. The following statements by experts leaves no doubt about this."

The report quotes Hon. Clarence G. Morse, former Board Chairman. This is what he said:

My personal philosophy is that the purpose and intent of a dual-rate contract is to garner all shipments of every character by the conference lines.

I personally feel and believe that the purpose and intent of a dual-rate system is to drive out nonconference competition.

This is to be found in the House hearings.

Robert Bicks, former First Assistant and Acting Assistant Attorney General of the Antitrust Division of the Department of Justice, during those same hearings, in opposing legalization of dual-rate contracts, said that the "interested Government agencies do agree, as the Chairman of the Maritime Board put it, that 'the purpose and intent of a dual-rate system is to drive out nonconference competition.'"

W. Wallace Kirkpatrick, former Acting Assistant Attorney General of the Antitrust Division of the Department of Justice, also testified in the same vein.

Later, as appears on page 22 of the report, it will be observed that Mr. Tollefson, of Washington, got right to the point. Listen to the question he asked:

Now, if a conference contract system comes before you for approval, if what he [Mr. Bicks] said [quoted above] was true, how can you ever approve an application? How can you honestly ever approve it?

Mr. Stakem, Acting Administrator, said:

There is no question about it. It would be difficult under the many standards spelled out in the bill (H.R. 4299) to approve a conference system.

Of course not. We would march up the hill, authorize a conference, then turn around, march down the hill, and deauthorize such a conference.

Mr. Matthew S. Crinkley, executive vice president of Isbrandtsen Steamship Co., laid it right on the line. The Isbrandtsen Steamship Co. is the company that went into the lawsuit decided in 1958, which threw out these arrangements. Mr. Crinkley said:

I think then that, if that is made a condition to permitting the conference contract rate system, you might as well not legalize it.

That is precisely the point.

That is why this amendment is of such vital importance—it would take us up the hill, we would authorize these conference systems, and then we would turn around, march down the hill, and deauthorize them. In my opinion, under

this language, it would be impossible for any honest Commissioner of the Federal Maritime Commission to authorize a conference system at all. He simply could not do it with that language in the bill.

So if Senators want a conference system, vote down the amendment; and if they do not want a conference system, the best way in the world to kill the bill is to vote for the amendment, because there will not be anything left to the bill afterward.

This brings me to the next point which I wish to discuss. I have been discussing it from time to time during the debate. The question is whether or not we want a conference system. The bill authorizes a conference system which has some aspects of a monopoly—not completely, because these conferences are open ended. Any firm that wants to get in can get in on the same and equal terms as those who are already in it; and anyone who wants to get out can get out on 90 days' notice. It is not a monopoly in the true sense of the word. We are trying to get stable common-carrier oceangoing traffic. We have learned, through 50 years of study, this is the only way to do it.

Let me repeat that the first investigation of the conference system was started in 1906. The first conference agreement went into operation in 1875, almost 100 years ago. Conferences have been common practice throughout the world ever since that date. In 1906 the royal commission, designated by the King of England, made a study of conference arrangements for the purpose of determining whether or not the conference systems were detrimental to the commerce of the British Isles and their trade generally. The commission came to the conclusion that they must have a conference system of some kind or another; that the alternative was trade wars, no stable traffic, no stable rates within the industry, and no way for a company to know whether or not it could establish a scheduled service anywhere in the world. The big companies would eat up the little ones, and in the end there would be bigger monopoly systems than ever. That report was made in 1909.

The Alexander committee in the House of Representatives, in 1912, extensively studied this question. The distinguished Senator from Tennessee has referred to the report, which came to identically the same conclusion; namely, that a conference system was essential to the life of the merchant marine and the stability of the merchant marine throughout the world.

The Shipping Act was enacted in 1916. There again this whole subject was studied, and secret rebates and the use of fighting ships were outlawed.

In 1936 Congress adopted the Merchant Marine Act. The matters were all studied again.

After the Isbrandtsen decision in 1958, the House Committee on Merchant Marine and Fisheries conducted extensive hearings. The conclusion of the House committee was identical with the conclusion of the Senate committee;

namely, that a conference system is absolutely necessary.

So, what have we tried to do? We have tried to authorize, affirmatively, a conference system. We have laid down the limitations under which conference systems shall work. Because we have no way of giving extraterritorial force to American law, the only grip we have put on the conference system is to tell the U.S. Maritime Commission that, if certain standards are not met, there is an obligation to pull out the American-flag line.

Mr. KEFAUVER. Madam President, will the Senator yield?

Mr. ENGLE. Let me finish my statement. Then I shall be happy to yield.

These limitations are clearly set forth in the committee report, on page 11, and they are just as clearly set forth in the bill. They say the Commission cannot approve of a contract system which is detrimental to the commerce of the United States or contrary to the public interest or unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors.

In addition, there are certain specific things which must be included in the contracts. I mention these four in particular because there has been reference to the differential in rates between outgoing commerce from the United States and inborne commerce to the United States.

There is language in the bill which provides that if the arrangements are detrimental to the commerce of the United States or unjustly discriminatory or unfair as between exporters from the United States and their foreign competitors, the Commission cannot approve the conference. In other words, so far as it is possible for us to go, when we are dealing with an international operation, we undertake to set up the best kind of regulation possible. We cannot regulate foreign lines.

Mr. KEFAUVER. Madam President, will the Senator yield?

Mr. ENGLE. I will yield to the Senator in a minute.

These foreign lines will not accept American regulation.

They have told us that. It is necessary for them to come into the conference arrangements voluntarily. If they do not come in voluntarily, there will be no conference.

We do not wish to have the conferences get together and "run hog wild," discriminating against shippers and discriminating as between ports and doing other things which ought to be prohibited.

How would we stop these things? We would stop them by saying that if such is undertaken we shall pull the American-flag lines out of the conference. That is the only grip we have on them. That is how the bill is engineered to act.

The bill is put together in such a way as to approve the conference systems which have been in operation for nearly a hundred years, but to put a public body on top of their operations with the re-

sponsibility of protecting the public interest.

Mr. KEFAUVER. Madam President, will the Senator yield?

Mr. ENGLE. Permit me to finish with one of two other items.

The statement was made that the foreign-flag lines would be the chief beneficiaries of passage of the bill. That is not true. The chief beneficiaries of passage of the bill will be the American-flag lines and the American shippers. I do not know of a single American-flag line opposed to the bill. I do not know of one.

If there were no conference system the foreigners could operate their flag-lines with lower rates. The foreign operators do not pay the same wage rates the American operators pay. It is necessary for our Government to subsidize our merchant marine today at between \$300 million and \$400 million a year, simply to hold them even. If there were no conference system and there were a "cat and dog rate war," the American merchant marine would be sunk. That is all there is to it. That is why the American lines are in favor of the proposed legislation. The shippers are. A great majority of the shippers came in.

Yesterday afternoon we indicated that agriculture was not against the bill, at least judging from the telegrams and communications. I put many of those in the RECORD, as shown on page 18165 and following. A number of them are in the RECORD.

There was a communication from U.S. Borax, which is certainly a large shipper.

There was a communication from the Mississippi Valley Association.

The telegrams were sent to the chairman of the Committee on Commerce [Mr. MAGNUSON] and one or two were sent to me.

There was a communication from the Oklahoma State Cotton Exchange.

There was a communication from the Southern Cotton Association. This is a telegram from Memphis, Tenn.:

The Southern Cotton Association, composed largely of cotton shippers residing in Tennessee, Mississippi, and Louisiana, want to thank you for your efforts regarding H.R. 6775 and assure you of our support.

Mr. KEFAUVER. Madam President, will the Senator yield?

Mr. ENGLE. I will yield in a minute, when I have finished my statement.

Madam President, I have a telegram from a cotton firm in Georgia, sent to the chairman of the full committee, and I ask unanimous consent to have it printed in the RECORD at this point.

There being no objection, the telegram was ordered to be printed in the RECORD, as follows:

NEWNAN, GA., September 12, 1961.
Senator WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.:

Urge your support H.R. 6775 as reported by Senate Committee on Interstate and Foreign Commerce as feel this essential to cotton trade and is fair and reasonable legislation for both shippers and carriers.

W. W. KIRBY,
President, Magnet Bros., Inc.

Mr. ENGLE. Madam President, there was another communication from Memphis, Tenn., from the chairman of the Ocean Freight Committee, American Cotton Shippers Association.

There was a communication from the Texas Cotton Association.

There was a communication from the Quarker Oats Co.

There was a communication from the Dow Chemical Co.

There was a communication from the New Orleans Traffic and Transportation Bureau.

There was also a communication from the president of the National Lumber Exporters Association.

Those all appear in the RECORD at the point I have cited, which I cite for the purpose of indicating that the proposed legislation is not adverse to the interests of the shippers. The shippers support it. It is absolutely essential to the life-line of the American merchant marine. All the American-flag operators support the proposed legislation.

Mr. KEFAUVER. Madam President, will the Senator yield?

Mr. ENGLE. The amendment offered to the bill would destroy the conference system, because under the language no honest public official of the Maritime Commission could certify that situation does not exist. The very purpose and intent of the conference system is to get exclusive patronage contracts.

I yield to the Senator from Tennessee.

Mr. KEFAUVER. The Senator has stated that the purpose of the bill is to force out of competition any independents, or tramps, who might compete with conference lines. That is the admitted purpose.

Mr. ENGLE. I did not say that.

Mr. KEFAUVER. It is to force the independents into the conference. If their competition were to be eliminated—and I think it would be if the bill were passed—and the Maritime Commission had no power to control rates, would protect the foreign commerce of this country insofar as the farmers, industry, and the consumers are concerned?

Mr. ENGLE. I am glad to answer the question. Everybody who uses the oceangoing shipping except, I would say, a small percentage, is in favor of the proposed legislation and supports it. In other words, the bill in its present form not only has the support of a large majority of the shippers, but also the unanimous support of the American-flag lines.

The bill was reported from the Senate Committee on Commerce by a unanimous vote.

Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 12 minutes remaining.

Mr. KEFAUVER. Will the Senator answer my question?

Mr. ENGLE. I have endeavored to answer the Senator's question. I refuse to yield further.

Madam President, I yield 5 minutes to the distinguished Senator from Kansas [Mr. SCHOEPPPEL].

Mr. SCHOEPPPEL. Madam President, I thank the distinguished junior Senator

from California. I wish to associate myself with him and with his remarks on this proposed legislation.

Fundamentally its purpose is to legalize dual rate contracts and, within the limits of hard reality, to regulate the operations of steamship conferences.

The bill takes us into the world of international shipping, and it is easy for a farm-bred Kansan to get in over his depth. Nevertheless, the bill can have a key impact in Kansas and everywhere else in the Nation because of its direct bearing on the foreign commerce of the Nation, both imports and exports, as well as on the subsidies provided by all taxpayers to the American merchant marine.

Steamship conferences, first, are voluntary associations of companies which operate ocean common carriers. Bluntly stated, they are cartels whose primary purpose is to limit the competition for ocean freight through agreements to control rates, allocate cargoes, and otherwise. It has long been the almost universal practice for American and foreign steamship lines engaging in ocean commerce to operate under such conference agreements and arrangements, and conference agreements are permitted under U.S. law. They were specifically exempted from the antitrust laws in 1916 following a long and comprehensive investigation by the Congress.

One of the devices used by conferences is the dual-rate contract, a system by which ocean freight rates are set at two levels. The lower rate is charged to shippers who agree to patronize conference vessels, and the high rate is charged to shippers who do not agree to ship all or a specified part of their cargoes on conference vessels.

Dual-rate contracts have been used for many years by about half of the 113 steamship conferences serving the United States, with the sanction of the Federal Maritime Board and the apparent approval of the courts. However, in 1958, the Supreme Court struck down one such contract and cast doubt on the legality of them all. The decision, while it outlawed dual-rate contracts, did not outlaw conferences or conference agreements.

This bill would legalize dual-rate contracts, provided they meet careful and extensive safeguards administered by the newly constituted and expanded Federal Maritime Commission.

Three basic standards are established by the bill, and each dual-rate contract will be measured against those standards. The Commission cannot permit use of such a contract if it is found to be one, detrimental to the commerce of the United States; two, contrary to the public interest; or three, unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors.

In addition to these three basic standards, the bill spells out seven different conditions which each contract must contain before the Federal Maritime Commission can permit its use.

Together, these requirements impose a total of 10 safeguards on dual-rate

contracts, all designed to make sure that the contracts meet the public interest.

The problem we face today is the basic conflict between our traditional antitrust principles and the cartel concept which guides steamship conferences.

In resolving this conflict, it is essential to bear in mind that the regulation of international shipping is difficult, if not impossible, for any single government to achieve. The foreign commerce of the United States is also the foreign commerce of another nation. At best we could control only one end of the journey, and even then only a minority of the carriers are U.S. citizens or U.S. firms. The testimony of the State Department is compelling in this regard. Furthermore, the history of ocean shipping over the last 100 years shows that there is no happy medium between war and peace, and that rate wars lead to monopoly or to the exposure of American shippers and lines to disastrous competition with foreign shippers and lines. Peace is possible only through the use of conference arrangements and agreements, of which dual rates are often a key element.

In the face of these facts, U.S. law for 45 years has exempted steamship conferences from the antitrust laws and substituted instead the restraint of Government regulation specifically designed to take into account of the international character of the industry. This bill is based on that approach, and it also recognizes that overregulation by the United States will simply result in putting shippers in other areas of the world in a superior competitive position.

For these reasons, then, I shall support the committee bill. I shall oppose amendments based on our antitrust principles because of the clear showing in our hearings and in the whole history of ocean shipping that they will scuttle the American merchant marine and gravely damage the Nation's foreign commerce.

I hope that the amendment now under consideration will be rejected.

Mr. ENGLE. Madam President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendments, en bloc, of the Senator from Tennessee [Mr. KEFAUVER]. (Putting the question.)

The amendments were agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. KEFAUVER. Madam President, I move to reconsider the vote by which the amendments were agreed to.

Mr. ENGLE. Madam President, I move to reconsider the vote by which the amendments were agreed to.

Mr. STENNIS. Madam President, I move to lay that motion on the table.

The PRESIDING OFFICER. The question is the motion to lay on the table.

Mr. MORTON. Madam President, I demand the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been called for. Is there a sufficient second? There is not a sufficient second.

Mr. LONG of Louisiana. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. KEFAUVER. Madam President—

The legislative clerk proceeded to call the roll.

Mr. KEFAUVER. Madam President, was there a sufficient second?

The PRESIDING OFFICER. There was not sufficient second.

Mr. KEFAUVER. Madam President, for what purpose is the roll being called?

The PRESIDING OFFICER. The absence of a quorum has been suggested.

Mr. KEFAUVER. As I understand, the amendments have been agreed to.

The PRESIDING OFFICER. A quorum call is now underway.

The legislative clerk resumed the call of the roll.

Mr. MANSFIELD. Madam President, I ask that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Madam President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MANSFIELD. I should like particularly to ask the Senator from Tennessee, the author of the amendments which have just been adopted by voice vote, and to ask the Senate as a whole, if they would consider, in view of the circumstances surrounding the adoption of the amendments, a unanimous-consent request that the voice vote be vitiated and that the yeas and nays be asked for?

Mr. KEFAUVER. Madam President—

The PRESIDING OFFICER. The matter is not debatable since the vote was on the motion to table.

Mr. KEFAUVER. Reserving the right to object—

Mr. MANSFIELD. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. Madam President, is it in order to make a parliamentary inquiry?

The PRESIDING OFFICER. It is in order.

Mr. MANSFIELD. Madam President, I would like to find out if it would be possible to make a unanimous-consent request to vitiate the voice vote by which the Kefauver amendments were agreed to. I do so on the basis of the fact that there evidently was a clear misunderstanding on the part of the membership of the Senate, and a further understanding that the yeas and nays had been ordered, when they had not been.

In view of the circumstances, I should like to know whether it is in order to request the Senator from Tennessee to make such a unanimous-consent request, so that we could have a rollcall vote on these amendments, and thereby settle any difficulties and confusion which may have resulted from the vote that has been taken.

The PRESIDING OFFICER. Is there objection?

Mr. KEFAUVER. Reserving the right to object, may I make a similar parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state it.

Mr. KEFAUVER. What is the status of the motion that was offered in connection with the antitrust amendments so far as the RECORD stands at this time?

My understanding was that the question was clearly put by the Presiding Officer, and that the amendments were agreed to, that a motion to reconsider was made, and that a motion to lay the motion to reconsider on the table was made, and that that motion was agreed to.

The PRESIDING OFFICER. The Senator is correct.

SEVERAL SENATORS. No! No!

Mr. KEFAUVER. The Chair has ruled that that is correct.

Mr. MANSFIELD. Would the Chair reconsider what it has just said?

Mr. KEFAUVER. The Chair has ruled.

The PRESIDING OFFICER. The Chair understood that the Senator from Colorado [Mr. CARROLL] had made the motion to table. The Chair stated the question. While the question was being stated evidently the Senator from Kentucky [Mr. MORTON] asked for the yeas and nays. There was not a sufficient number seconding the request, but it had the effect of nullifying the motion of the Senator from Colorado. So the question now before the Senate is whether the unanimous-consent request can be made to reask for the yeas and nays. Is there objection?

Mr. KEFAUVER. Madam President, reserving the right to object, I do not want to deny anyone an opportunity to vote on the matter. This is in the nature of a parliamentary inquiry. The Senators who were present voted overwhelmingly in favor of the amendments. Since other Senators have come into the Chamber, I wonder whether the Senator from Montana would include in his request a request that there be 30 minutes more of debate on the amendments?

Mr. MANSFIELD. The Senator is asking for a great deal, but I would be willing to allocate time on the bill, if the minority leader would also, so that further discussion could be had on this question. May I say, Madam President, that the "overwhelming number" of Senators in the Chamber, when the vote was taken—I was not here—if I am correctly informed, did not amount to more than a half-dozen Senators. On that basis I would be willing to join the minority leader in allowing time on the bill, so that there may be additional debate on the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. KEFAUVER. Madam President, reserving the right to object—

Mr. CARROLL. Madam President, reserving the right to object, I should like to suggest that the RECORD be clear. Some reference was made to the Senator from Colorado. I believe it was to the junior Senator from Colorado. The

junior Senator from Colorado did not make a motion to table. The Senator who made the motion to table is in the Chamber. It is the able junior Senator from Mississippi [Mr. STENNIS] who made the motion to table. The junior Senator from Colorado was seeking recognition to make such a motion.

I would like to have the RECORD clear in another respect. I have discussed this matter with the official reporter. The motion to reconsider was made. The motion to table was made and acted on. The RECORD will show that subsequent to that the junior Senator from California rose to make a motion to reconsider. Then there was another motion to table, and then there was a request for the yeas and nays. There was not a sufficient second. There had been a definite legislative ruling. Does that not fit into the recollection of the Chair?

The PRESIDING OFFICER. That is a correct statement.

Mr. CARROLL. May I make a parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state it.

Mr. CARROLL. I ask it not only for the purpose of this instance, but for its effect on other legislative procedure. Once there has been a legislative decision reached by the Senate, there is a finality of decision on the matter. Is it then subject to a unanimous-consent request to wipe out what has been done?

The PRESIDING OFFICER. Will the Senator restate his inquiry?

Mr. CARROLL. I have asked the advice of the Chair in the form of a parliamentary inquiry. Once there has been a final determination under the Senate rules of procedure and a decision has been reached by the Senate according to those rules, is it then subject to a unanimous-consent request to vitiate all that has gone before?

The PRESIDING OFFICER. It may be done by unanimous consent only. The Senator from Montana has asked for unanimous consent.

Mr. LONG of Louisiana. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LONG of Louisiana. Where a motion has been made and the question put, but before the Chair has announced the result, and a Senator suggests the absence of a quorum, is there any finality about that vote?

The PRESIDING OFFICER. The request was made for the yeas and nays just before the announcement was made, and while the Senator from Kentucky was addressing the Chair, seeking to be recognized.

Mr. LONG of Louisiana. May I ask for the yeas and nays on my pending motion?

Mr. STENNIS. My name was used as having made the motion to table the motion to reconsider. That is correct. When the Chair said the Senator from Colorado made the motion, I assumed that he also was making the motion and that it was his motion the Chair understood.

Madam President, I walked into the Chamber just in time to take part in the voice vote. After the vote on the amendment, a motion was made to reconsider, and the Senator from Tennessee nodded to me to move to lay on the table the motion to reconsider, which I did.

Since then, I have learned from the Senator from California [Mr. ENGLE] that his intention was distracted by inquiries from another Senator, and that he did not realize that an affirmative vote was being taken on the amendment. I know there was considerable confusion in the Chamber when the vote was taken. Under those circumstances, I gladly withdraw my motion to lay on the table the motion to reconsider.

Mr. KEFAUVER. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Tennessee will state it.

Mr. KEFAUVER. I take it, in view of the ruling of the Chair, that final action has been taken on the legislative proposal, and that an objective by any Senator to the unanimous-consent request would finish the action upon the amendment.

However, if some Senators feel that they would have liked to be heard and to participate in the discussion and the vote, even though it is within my power to object, and I feel very deeply about the matter, I shall not do so if Senators will agree to allow each side 30 minutes from the time on the bill to enable the discussion of the amendments to proceed a little further.

Mr. MANSFIELD. Madam President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield.

Mr. MANSFIELD. I appreciate the great courtesy of the Senator from Tennessee. I realize how long he has fought. Now that he has won, I know what it means to him to accede to this request, but it indicates how big a man he is.

Mr. KEFAUVER. I appreciate the words of the majority leader.

Madam President, may I inquire how much time remains on the bill?

The PRESIDING OFFICER. Fifty-three minutes remain on the bill.

Mr. KEFAUVER. I may suggest to the Senator from Montana that if the three amendments had been offered separately, 1 hour would have been allotted on each amendment. However, the three amendments were considered en bloc. To enable Senators who may wish to express themselves on the bill and the amendments, would it not be fair to ask for an additional 30 minutes to a side, the time not to be taken from the time remaining on the bill?

Mr. MANSFIELD. If the Senator would not mind—and this is purely a technicality; I shall agree to his request—I intended to suggest that 1 hour be added to the time for debate on the bill, with the proviso that 30 minutes be allowed to each side. I make that request now; and, I may add, time is running.

Mr. CARROLL. Madam President, I have discussed the proposed legislation with the able Senator from Washington

[Mr. MAGNUSON], the chairman of the committee, and with the able Senator from California [Mr. ENGLE], chairman of the subcommittee. They are competent lawyers. They feel deeply about the proposed legislation. I must say—and I think the Senator from Tennessee will agree with me—that we had no intention to catch any Senator off guard. I had assumed, that because of the persuasiveness and clarity of the arguments of the Senator from Tennessee, that Senators were convinced and that they were willing to have the amendments taken to conference. But if Senators wish to debate the question further, I suppose that will have to be done.

The majority leader is right. We do not wish to act with unbecoming haste and take advantage of Senators caught off balance, as I am sure, in this particular case, the able Senator from California was, as he has so stated. We accord this courtesy to those Senators. However, we, too, feel very strongly about the need for amendment of the bill. When the time comes, if we lose the vote, I hope the President of the United States will veto the proposed legislation.

Mr. MANSFIELD. Madam President, may we have a ruling from the Chair?

The PRESIDING OFFICER. The Senator from Mississippi [Mr. STENNIS] has a right to withdraw his motion to lay on the table the motion to reconsider. He has done so. The question now before the Senate is on the motion to reconsider.

Mr. MANSFIELD. The Senator from Tennessee has graciously requested that the previous vote be vitiated.

I assume he would wish to have the yeas and nays ordered on his amendments. I ask unanimous consent that an additional hour be allocated to the debate on the bill, 30 minutes to a side.

The PRESIDING OFFICER. Without objection, the additional time will be allotted.

Mr. MANSFIELD. Was there not another request?

Mr. KEFAUVER. The request was for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second?

The yeas and nays were ordered.

Mr. MANSFIELD. Madam President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield.

Mr. MANSFIELD. What we are about to debate is the Kefauver motion, which had previously been agreed to.

Mr. KEFAUVER. We are starting de novo.

Mr. MANSFIELD. As the Senator from Tennessee says, we are starting de novo.

Mr. LAUSCHE. When did we act upon the motion to reconsider?

The PRESIDING OFFICER. That motion was withdrawn.

Mr. MAGNUSON. Madam President, will the Senator from Tennessee yield 1 minute to me?

Mr. KEFAUVER. I yield 1 minute to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Tennessee now has 30 minutes.

Mr. MAGNUSON. I express my thanks to the Senator from Tennessee and the Senator from Colorado for putting us all back "de novo." I must say that the Senator from Washington was in the Chamber, discussing certain sections of the bill, when the vote was taken. I was conferring with the Senator from Louisiana [Mr. LONG]. When I started my conversation, the distinguished Senator from Kentucky was talking about some fine event. I actually thought he had asked for the adoption of a resolution relating to the subject about which he was speaking. So we all voted "yea." Then the Senator from Kentucky took his seat.

Also, I had been in the Committee on Appropriations, and I felt certain that a yeas-and-nays vote had been asked for on this very important amendment. I assumed there would be a quorum call and a yeas-and-nays vote.

I appreciate the courtesy of the Senator from Tennessee and the Senator from Colorado. Now we can proceed de novo. I think it is well that we have a little more time.

Mr. KEFAUVER. There was no mistake about what happened. Because I am so much interested in the subject, and it means so much to the American people, I thought the vote was on the right side of the issue; that Senators on the right side of the issue were about to win over those on the wrong side of the issue. So there was no question in my mind as to what was happening.

Mr. CARROLL. Madam President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield.

Mr. CARROLL. I may say to the Senator from Washington [Mr. MAGNUSON], that I, too, was watching the vote carefully. I was profoundly delighted when I heard the Senator from Washington say, "Aye," because I know he is a great lawyer and I felt that on this particular issue the light of wisdom had descended upon him.

Mr. HUMPHREY. Madam President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield to the Senator from Minnesota.

Mr. HUMPHREY. I wish to commend the Senator from Tennessee upon his great capacities and abilities.

Mr. KEFAUVER. I thank the Senator from Minnesota.

Madam President, I requested that an additional 30 minutes be allowed each side, in order to have opportunity for further discussion of this matter, which is of the utmost importance to the economy of the Nation—to the American people, the American shippers, the independent carriers and shipping lines, and also to the Treasury of the United States. When I made the request for additional time, there was a larger attendance of Senators than there is now. I am sorry that not more Senators are present to participate in this debate, which is one of the most important debates to be held in the Senate during this session.

I remember very well that not long ago President Eisenhower was greatly concerned about the gold balance, and the situation became so bad that it was even proposed that the families of our Armed Forces overseas be brought home.

Furthermore, Madam President, we read every day that we are losing a great deal of our foreign trade. But this matter vitally affects our foreign trade, our exports, and the jobs of American citizens. I shall demonstrate why that is so.

Incidentally, Madam President, if other Senators wish to use part of this 30 minutes, I shall be glad to yield.

Mr. DOUGLAS. Madam President, I do not wish to speak on the bill; but if the Senator from Tennessee is willing, I should like to ask some questions about his amendments.

Mr. KEFAUVER. I am happy to yield to the Senator from Illinois.

Mr. DOUGLAS. First, let me ask whether the amendments C, D, and E—which I understand are now before the Senate and are to be voted on en bloc—will reinsert in the bill certain provisions which were included in the bill as passed by the House of Representatives?

Mr. KEFAUVER. Exactly so; and those provisions were included in the bill by the House after 2 years of hearings and consideration by one of the finest and most thorough committees of the House of Representatives—its Merchant Marine and Fisheries Committee. That committee was unanimous in its recommendations in this respect. So was the Judiciary Committee, under the chairmanship of Representative Celler. Those committees made exhaustive studies of this matter.

Mr. DOUGLAS. So the Senator from Tennessee is proposing that there be included in the bill the provisions voted by the House of Representatives, but recommended against by the Senate committee?

Mr. KEFAUVER. Yes. Furthermore, the action of the Senate committee was vigorously objected to by the Department of Justice.

Mr. DOUGLAS. I understand that the purpose of these amendments is to prevent any international conference from adopting a rule which would cause the exclusion from the trade of the presently independent carriers.

Mr. KEFAUVER. That is exactly the purpose—in other words, to have some minimum amount of competition in international shipping.

Mr. DOUGLAS. If the amendments are not agreed to, the independents can be forced into the conferences, and then can be compelled to conform to the rates established by the conferences?

Mr. KEFAUVER. That is correct. Their only alternative would be to go out of business.

Mr. DOUGLAS. The Senator from Tennessee is trying to preserve the independents, not merely for their own sake, but also in order that they will be able to introduce an element of competition, and thus keep shipping rates and passenger rates lower than they otherwise would be? Is that the point?

Mr. KEFAUVER. That is correct, because the rates are not regulated in any other way. So if these amendments were to be rejected, no competition would remain.

Furthermore, we know what the American people can expect if they are at the mercy of an international cartel and if that cartel is without regulation.

Mr. DOUGLAS. The Senator from Tennessee believes, does he not, that even though only a comparatively small minority of the shipping firms are outside the conferences, nevertheless they exert an influence on the rates charged by the conferences?

Mr. KEFAUVER. That is correct. The hearings held by both the committees show that when there is some competition, the rates are held low. For instance, there was discussion about why the rate from England to Greece was about one-fourth the rate between the United States and Greece, even though the distances are about the same. The testimony was that the reason is largely that some independents are operating in that trade. Similar testimony was received throughout the hearings.

Mr. DOUGLAS. So if the amendments of the Senator from Tennessee are rejected, the independents will be forced into the conferences, and then the conferences can establish still higher rates and even greater differentials against American shipping? Is that the case?

Mr. KEFAUVER. That is entirely correct. Although we love our foreign friends, they are not particularly interested in increasing manufacturing in the United States—at least not as much interested in that as we are.

Mr. DOUGLAS. Is not that an understatement?

Mr. KEFAUVER. It may be. However, it is clear that in the absence of these amendments, our manufacturing concerns and shipping will be at the complete mercy of the international cartel which is dominated by foreign shipping lines.

Mr. DOUGLAS. I thank the Senator from Tennessee. It seems to me that his amendments are absolutely essential. I hope very much that the yea-and-nay vote will affirm the voice vote previously taken; and I join the Senator in the hope that if the bill in its present form is passed and if the House should unfortunately agree to the Senate committee's version of the bill as it now stands, the President will veto it. However, I hope we can change the bill here on the floor of the Senate.

Mr. KEFAUVER. I hope so, too. I cannot help but feel—in view of some five solid facts—that if more Members of the Senate were present and if they listened to all the debate and if they understood these five solid facts, they would vote for these protective amendments.

The first fact is that the conferences are 85 percent dominated by foreign shipping lines. The Senate has refused to delete from the bill the provision which permits all the conferences to join an international cartel. So our shippers and our independent carriers and our export trade will, to a considerable extent, be at the mercy of the decisions of

the foreign shipping lines, unless we adopt protective amendments. Even though there is some little mention in section 17 of the present Shipping Act provisions—for instance, those prohibiting widespread discriminations, and so forth—yet the pending bill would, in the absence of these amendments, completely exclude the conferences from application of the antitrust laws. But we know that right now the conferences are placing unreasonable, unjust, and unconscionable burdens on American shipping.

I wish Senators would read again page 18198 of the CONGRESSIONAL RECORD for yesterday, which shows that on chemicals we are paying 7 or 8 times the fair rate from the United States to Germany; on steel, twice as much; and on cheese, twice as much.

On page 18187 of yesterday's RECORD we can see the disparity in the cost of shipping cotton and tobacco from the United States to foreign ports. The table and figures on that page show the impact of conference cartels on shipping rates.

If anybody thinks an international cartel is going to treat us nicely, he ought to look at the record. There has never been a group of organizations that has engaged in so many rebates, discriminations, unfair practices, predatory methods, as have these international cartels. I do not want to put very much of the burden or blame on American shipping, although some of it must be placed on them. I think most of it is the fault of foreign flag lines. But, for some reason or another, American companies in these cartels have been charging the American Government much more for shipping grains than they have charged private shippers.

Are we going to allow American shippers to go unprotected by not adopting even these very minor antitrust amendments? If we do not adopt some such restrictions, a shipping conference will be able to adopt a rate the intent of which is to put somebody out of business. They can engage in any other tactics they want to, and there will be no protection at all.

The Senator from Illinois referred to independents. Twenty-six American trades are served by independents. I do not mean there are that many full companies acting independently. But, they at least provide some brake on rates. If that brake is taken away, there will be nothing to stop them from charging whatever rates they wish to, and we shall live to see the day when this action will be regretted exceedingly.

I wish to state again the purpose of these antitrust amendments:

(a) They would keep the sea lanes of the United States open to all vessels in conformity with traditional concepts of freedom of the seas.

(b) They would assure that American lines could, with safety, resign from conferences if necessary to protect the foreign commerce of the United States and at the same time have access to cargo.

(c) They would assure that no American line would be forced into a conference without its consent.

(d) They would safeguard the business of tramp vessels, which form an essential part of the American merchant marine.

(e) They would protect American shippers against excessive rates charged by steamship conferences having a monopoly in the trade, by assuring the existence of independent competition.

As I said yesterday, the United States is unique in this respect, because we believe in, and our whole economy is built upon, the free, competitive system. That is what we talk about in chambers of commerce. That is what businessmen and the rest of us talk about. Almost every other nation in the world has a different kind of system. Only a few have systems similar to the American system. In a large part of the world, and in the Communist bloc, everything is state owned. In other parts of the world there are in effect government price controls, nationalization, and so forth. It is only in the United States that a substantial part of the economy is left under the free enterprise system. What we are doing here is breaking down a large segment of our economy, and removing it from any control whatsoever under the antitrust laws, and putting it under an international cartel. I do not believe the American people, American business, or the American Congress want that done. If Senators do not want it done, they should vote for these amendments.

Mr. HART. Madam President—

Mr. KEFAUVER. I yield to the Senator.

Mr. HART. I think the Senator from Tennessee, under whom I serve on the Antitrust Subcommittee, has effectively presented the amendment. It strikes me, as so often happens, the real opposition and the real concern does not show up. I think the basic concern on the part of the shippers we are talking about is that, if we do as the Senator from Tennessee has proposed, it will be the foot in the door in an effort to regulate rates, cold turkey. I suppose, while there are those of us who feel that this, too, will make sense, this is such a hideous notion that the resistance to the relatively mild amendments proposed by the Senator from Tennessee is as strong as it is.

Mr. ENGLE. Madam President, will the Senator yield?

Mr. HART. Yes.

Mr. ENGLE. The amendment pending at the moment is the composite, triple-headed amendment offered on the antitrust proposal.

Mr. KEFAUVER. That is correct.

Mr. ENGLE. The Senator from Tennessee has a subsequent amendment that deals with the business of fixing rates. At that time we shall discuss it at some length. The difficulty with the amendment offered by the Senator from Tennessee at the present time is that, on the basis of what the record shows, it simply deauthorizes conferences. My view is we ought to vote against the bill if that is the way we feel about it.

Mr. HART. There are those of us who feel the use to which the conferences have been put is the reason why the proposal by the Senator from Tennessee is

the very least we should adopt. I share those views.

Mr. KEFAUVER. I thank the Senator. Madam President, I yield the floor.

Mr. ENGLE. Madam President, I suggest the absence of a quorum, and ask unanimous consent that the time not be taken out of the time of either side.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ENGLE. Madam President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENGLE. Madam President, I yield 5 minutes to the Senator from Minnesota [Mr. McCARTHY].

Mr. McCARTHY. Madam President, I wish to ask the Senator one or two questions.

As I understand, the only way in which any agency of the U.S. Government can exercise any influence over a foreign-flag carrier is indirectly by virtue of its being in a conference along with ships that sail under the American flag.

Mr. ENGLE. That is correct. The problem—and I have emphasized it time and time again—is that we are dealing with an international operation. Actually, there are more foreign-flag lines plying the international seas than there are American-flag lines. So, if we are to have a conference system, we must have one with foreigners on a voluntary basis, inasmuch as we cannot give extra territorial force to American law. The foreign-flag lines have said they like conference systems. Our people do, too. They have said, "We want the conference system."

We were concerned about the problem of which the Senator from Tennessee spoke, which the Senator from Michigan mentioned; that is, the necessity to be careful in setting up and authorizing the conference systems, which are monopolistic in character, although not wholly monopolistic, because they are open ended and people can come in and go out as they please.

We did not wish to have these people sit down to write rates and do other things, such as to discriminate between shippers and ports, and those things; to the detriment of the foreign commerce of the United States. We provided that if they undertook to do so the leverage would be to authorize the Maritime Commission to pull out the American-flag lines. That would break the conference.

Let us assume that did happen. It has happened in times past. Let us assume the Maritime Commission said, "We will not go along with this kind of arrangement and we will not approve it."

The American-flag lines would then go back and say, "We have to do something else, or there will not be any conference, because the Commission will not let us participate."

Then the economic pressures, the philosophical pressures, or whatever pressures there are, to make these people stay in conference, would be in

play, to make them devise the modifications necessary to make the agreement comply with reasonable standards.

That is actually the only leverage available, the power to break the conference. We would do that by empowering the Maritime Commission to pull out the American-flag lines.

Mr. McCARTHY. If we were to force the American owners out of the conference, this would still allow the possibility of all the foreign flag owners organizing their own conference. We would have not even that kind of indirect influence over the rates they might charge, in such an event.

Mr. ENGLE. The Senator is correct. In addition, it is my opinion that in the absence of a conference or conference arrangements, in a rate war the foreign-flag lines would simply beat the American-flag lines to death, because they have lower operating costs. At the present time we are subsidizing the American merchant marine approximately \$300 million or \$400 million a year, and still the Americans cannot compete as well as they ought to.

Mr. McCARTHY. A number of cases have been cited during the course of the debate in the last 2 days in regard to the difference in rates charged for cargo shipped from a European or foreign port to the United States, contrasted with rates for the same or similar cargo from the United States to foreign ports.

One of the cases in which I have a particular interest concerns a shipment of wire. A particular case has affected a manufacturing plant in Minnesota, which is in competition with wire produced in Belgium, as I recall. The wire is laid down on the dock practically at the foot of the wire manufacturing plant on the Great Lakes. Some of the figures indicate that the cost of shipping wire from Europe to the United States is approximately one-half the cost of shipping wire or similar steel products from the United States to Europe.

What is the explanation for the differential, if there is one?

In the legislation being proposed, is there any language which might move the Maritime Commission to put pressure on the conference or on the American shipowners in the conference, on the ground that such action is discriminatory and unfair to American industry, in an effort to bring about some adjustment in the rates?

Mr. ENGLE. We have provided for that in the bill. There is a direct mandate to the Commission not to approve a contract if it is found to be detrimental to the commerce of the United States or unjustly discriminatory or unfair as between shippers, exporters, imports, or ports or—and I emphasize this—between exporters of goods from the United States and their foreign competitors.

We wish to have the Commission take a hard look at these kinds of arrangements.

I do not approve of a rate system in which the American exporter gets the worst end of the deal. We have put in the language of the bill the power for the Commission to do the only thing

we can do, which is to break up the conference, if those practices are followed.

The PRESIDING OFFICER. The time of the Senator from Minnesota has expired.

Mr. ENGLE. Madam President, I yield 5 more minutes to the Senator from Minnesota.

The alternatives might be not to have any conference at all, and there might be a "cat-and-dog" rate war. We cannot fix the rates which the foreign shippers charge to bring goods from Europe, let us say, westbound to the United States. It is a matter of negotiation and of agreement. When the Commission finds something which is bad, the Commission has the power to and is directed under the bill to disapprove the conference.

Mr. McCARTHY. Is there a fair possibility that if the American shipowners were forced out of the conference the United States would have even less control and less power to try to eliminate the inequities and unfair rates than at present, while at least some American-flag shipowners are permitted to remain in the conference?

Mr. ENGLE. The reason the conferences have existed over almost a century is that this is the only way there can be stability of rates and routes and those things. If there are no conferences, the whole thing breaks down into a rate war. These men operate as common carriers. The ships run on regular schedules. There must be some stability.

The Senator from Kentucky [Mr. MORTON] earlier cited his experience, from his personal business background, as to what happens when there is no system at all. At one time a person is in fine shape, with the rates down low and "tramp" steamers and everyone in the business to haul the cargo. However, as soon as enough of them go broke the rates go sky high.

The problem is that if a man is in business in the United States and wishes to make a deal to transport goods over a period of time—1 or 2 or 3 years—there must be some stability in the freight rate structure; otherwise, the man may end up with a contract based upon a freight rate he thought was going to be good, only to find the rate 2 or 3 times as high, thereby wiping out all the benefits of the contract.

That is what the Senator from Kentucky talked about. That is why over a period of years the conferences have been authorized, and that is why the bill would authorize the conferences.

Mr. McCARTHY. There is an application pending by a shipping conference now before the Maritime Commission in which I believe the request is for a surcharge of something like 25 percent on shipping that originates in the Great Lakes ports. It is the opinion of many shippers on the Great Lakes that this would be a discriminatory rate, that it would have an adverse effect upon development of trade and commerce in the area and upon the whole development and use of the St. Lawrence Seaway. This would be a case in which the

standards attempted to be established in the bill would be clearly applicable?

Mr. ENGLE. That is correct. Not only that, but also there is language in the bill which provides that any Governor, and, under an amended added by the Senator from Tennessee, any port authority or any municipality which operates a port can go directly to the Commission and make the complaint. An order will issue, and the case will be decided within 120 days.

Mr. McCARTHY. So far as the special problem is concerned, would there be any more protection given to shippers, to producers, to everyone concerned in regard to the use of Great Lakes if the amendments being offered by the Senator from Tennessee were agreed to, over and above the protection these people might have under the terms of the bill?

Mr. ENGLE. The pending amendments simply would ruin the conference system. I am not sure the Senator was present when I made my earlier remarks on that subject.

Mr. McCARTHY. I am asking for an opinion. I understand the Senator's position.

Mr. ENGLE. The witnesses testified that with the language in the bill no conference system could be approved because any conference arrangement has a tendency to exclude other people from the trade. If one attempted to contract with all of the shippers, it would have that tendency.

I made a statement earlier in this regard. I said I did not see how any honest public official—and I believe they are honest—on the Maritime Commission could certify any conference arrangement with that language in the bill. That is what I complained about.

I said that it would be marching up the hill and down the hill again. We propose to authorize the conference system. If we were to put in the language suggested, we would simply put ourselves in the position of authorizing something which could not be done.

Mr. McCARTHY. In the Senator's opinion, the people who are concerned about shipping rates generally would be better protected by permitting the conferences to continue with the safeguards proposed in the bill than they would be if the Senate adopted the language which would have the effect of destroying the conference system?

Mr. ENGLE. That is my opinion, and it is the opinion of the majority of the shippers of this country. So far as we have been able to tell from the hearings held by the committee, more than two-thirds of them are for the conference system. Yesterday I had printed in the RECORD a great number of telegrams and communications from many shipping interests in this country.

The shippers want the conference system. The ship operators want the conference system. The customers want it because it would provide stability. That is the situation that the Senator from Kentucky is discussing. Industry wants to know what the rates will be over a long enough period of time so that it can plan the sale of goods.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. McCARTHY. What the Senator has said would apply to agricultural shippers as well as industrial shippers.

Mr. ENGLE. Yes. A number of cottongrowers and other agricultural interests have telegraphed their approval of the bill in its present form.

Mr. McCARTHY. I thank the Senator from California.

Mr. ENGLE. I thank the Senator from Minnesota.

Madam President, I yield the floor for the present.

Mr. KEFAUVER. Madam President, have I any time remaining?

The PRESIDING OFFICER. The Senator from Tennessee has 6 minutes remaining.

Mr. KEFAUVER. Madam President, in listening to the colloquy of the distinguished Senator from Minnesota and the distinguished Senator from California, I heard it said that they would rather have no conference system at all than to have these amendments. In fact, the former Chairman of the Maritime Commission, Mr. Stakem, said that as between the House bill and no bill, he would rather have the House bill.

If we reject the amendments we shall turn our international shipping over to a cartel which is controlled by foreign shipowners, who are already unjustly discriminating against American shippers. The American voice will be very small under that system, which is intended to put the independents out of business.

No power over rates is contained in the bill, so there would be no one left to protect the independents, the people of the United States, the shippers, the farmers, and the manufacturers, if these amendments are not adopted. That would be the result. The American people cannot survive that kind of calamity.

We have heard that if there is no conference, foreign shipping lines will drive American ships out of business. That statement overlooks the fact that the American ships in the conferences are largely subsidized so as to put them on an equal basis—insofar as wages, labor, repair costs, insurance, and so forth, are concerned—with the lowest cost foreign competitor, so that they would be in a position to compete even if there were no conference.

Of course, the American lines want the conference because they can charge higher rates. The foreign lines want the conference because it is a bonanza to them. They are receiving high rates while paying low-cost interest. If we turn the entire program over to these conferences without any antitrust provisions whatsoever, without any protection for the independents, we shall find that rates will go up, and they will be more discriminatory than they are at the present time.

Let me reemphasize that the Antitrust Division of the Department of Justice is strongly against leaving out these amendments. The Department of Agriculture is most vigorous in connection with the question. The only ones who want the amendments eliminated are

those who have an opportunity to drive out competitors if the amendments are eliminated. I yield the floor.

(At this point Mr. JAVITS took the chair as Presiding Officer.)

Mr. LONG of Louisiana. Mr. President, will the Senator yield?

Mr. ENGLE. How much time does the Senator desire?

Mr. LONG of Louisiana. Five minutes.

Mr. ENGLE. I yield 5 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 5 minutes.

Mr. LONG of Louisiana. Mr. President, statements that I have heard in this Chamber give cause for alarm because they have been so sweeping in nature. For example, the statement has been made that no protection is provided in the bill, and that the bill would make the sky the limit and leave things wide open. Notwithstanding that statement, I find, looking to the first part of the committee text, language which states that the Federal Maritime Commission shall permit conferences and permit rates to go into effect. On line 18 the bill states:

Unless the Commission finds that the contract, amendment, or modification thereof will be detrimental to the commerce of the United States or contrary to the public interest, or unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors.

There is the language that would prevent any injustice or unfairness, and would charge the Maritime Administration with seeing that rates are fair.

As I understand the bill, what is sought to be done is to authorize American ocean carriers, who are relatively high-cost carriers, to enter into rate agreements, which have been going on for 100 years with foreign-owned and operated shipping lines. Such agreements, generally called conferences, have been going on for 100 years.

Senators must realize that the pattern that is necessary to engage in ocean commerce does not fit into the pattern of our Antitrust Division, composed of lawyers who would like to regulate a farm cooperative as though it were the Standard Oil of New Jersey.

In the first place, our ideas and laws about outlawing discrimination in commerce cannot be made applicable to the transportation industry. The entire transportation industry, including highway, railroad, air and ocean carriers, contains a mass of discriminatory rates from top to bottom, depending upon the nature of the cargo, where it is going, and the particular industry for which the rate is provided.

These rates are subject to regulation and to some control, but seldom fixed by uniform competitive elements.

This Nation would be in a position, if it cared to do so, of trying to tell all the international carriers of the world that we will not permit our carriers to join conferences or to agree on what the ocean rates shall be. That would be the effect if we had no law permitting our

carriers to negotiate with the carriers of other nations on what the rates should be. We, as a high-cost operator, would tell foreign nations, which are the low-cost operators, that we will not engage in any understanding with them about rates.

To be consistent with the program, I assume that those who would like to do this would then go ahead and tell our operators that our rates should not be discriminatory, that they should be uniform. The result would be that any foreign carrier could look at the American published rate, bid 5 cents below that rate, and get all the cargo it might like.

It can be argued that with that kind of system, by subsidizing the shipping industry with money from the taxpayers' pockets to the extent necessary, we can still keep our ships on the sea. I suppose we could double, triple, or quadruple, the subsidy available and stay on the sea with low-cost operators. By means of higher subsidies, we would try to have the lowest rates, although we have the highest costs. That does not make much sense to me. Those who propose that sort of activity, of withdrawing our high cost carriers from the understandings with the other carriers, have yet to propose how they are going to run the show.

Now it is proposed by one of the Kefauver amendments that action cannot be taken by a conference if the total effect would be reasonably likely to cause the exclusion of any other carrier from the trade.

Yet the whole idea of the bill is to let these people get together on rates and compete with the people who are not in the agreement. If one fellow will not join and will not participate, the others are by necessity in price competition with him. He is trying to put the other fellows out of business. What is wrong with the other fellows trying to put him out of business? If he does not wish to join in the rate structure and competes with it and tries to cut it out, what is wrong with the others trying to put him out of business? If one insists on price competition, why should not the other be able to compete by cutting rates or making rebates?

I was much impressed by a telegram which appears in the RECORD at page 18166, sent by Lee A. Schwarz, the manager of the New Orleans Traffic and Transportation Bureau. This man speaks for the shippers of my section of the country. He is one of those who helped me fight against the basing point pricing bill, because it would have discriminated against the section of the Nation in which I am interested.

The PRESIDING OFFICER (Mrs. NEUBERGER in the chair). The time of the Senator has expired.

Mr. ENGLE. I yield 1 additional minute to the Senator from Louisiana.

Mr. LONG of Louisiana. Here is the same Mr. Schwarz on record in favor of this bill. He understands the transportation problem from the standpoint of the shipper. He fought against the manufacturers wanting to use the basing point, and he is today urging that we

pass the pending bill, to make it possible for our shippers to agree with the conference what the rate structure for ocean freight should be.

There is language in the bill which would prevent any unfair discrimination, and charges the Maritime Commission with the responsibility of seeing to it that there is not such discrimination.

Mr. ENGLE. Madam President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time for debate has expired. The question is on agreeing to the amendments offered by the Senator from Tennessee.

Mr. ENGLE. Madam President, a parliamentary inquiry. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas any nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Pennsylvania [Mr. CLARK], the Senator from Tennessee [Mr. GORE], the Senator from Alaska [Mr. GRUENING], the Senator from Wyoming [Mr. HICKEY], the Senator from Oklahoma [Mr. KERR], the Senator from Oregon [Mr. MORSE], the Senator from West Virginia [Mr. RANDOLPH], the Senator from Missouri [Mr. SYMINGTON], and the Senator from Texas [Mr. YARBOROUGH], are absent on official business.

I also announce that the Senator from New Mexico [Mr. CHAVEZ], is absent because of illness.

On this vote, the Senator from New Mexico [Mr. CHAVEZ] is paired with the Senator from West Virginia [Mr. RANDOLPH]. If present and voting, the Senator from New Mexico would vote "nay," and the Senator from West Virginia would vote "yea."

On this vote, the Senator from Oklahoma [Mr. KERR] is paired with the Senator from Tennessee [Mr. GORE]. If present and voting, the Senator from Oklahoma would vote "nay," and the Senator from Tennessee would vote "yea."

On this vote, the Senator from Alaska [Mr. BARTLETT] is paired with the Senator from Alaska [Mr. GRUENING]. If present and voting, the Senator from Alaska [Mr. BARTLETT] would vote "nay," and the Senator from Alaska [Mr. GRUENING] would vote "yea."

Mr. KUCHEL. I announce that the Senator from Colorado [Mr. ALLOTT] is absent by leave of the Senate to attend the Interparliamentary Conference in Brussels.

The Senator from New Hampshire [Mr. BRIDGES] is absent because of illness.

The Senator from Indiana [Mr. CAPEHART], the Senator from Nebraska [Mr. CURTIS], the Senator from Illinois [Mr. DIRKSEN], and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

The Senator from Iowa [Mr. MILLER] is absent on official business.

The Senator from Texas [Mr. TOWER] is absent by leave of the Senate on official business.

If present and voting, the Senator from Colorado [Mr. ALLOTT], the Senator from Indiana [Mr. CAPEHART], the Senator from Arizona [Mr. GOLDWATER], the

Senator from Iowa [Mr. MILLER], and the Senator from Texas [Mr. TOWER] would each vote "nay."

The pair of the Senator from Illinois [Mr. DIRKSEN] has been previously announced.

Mr. HARTKE. Madam President, on this vote I have a pair with the Senator from Pennsylvania [Mr. CLARK]. If he were present, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. HAYDEN. Madam President, on this vote I have a pair with the senior Senator from Oregon [Mr. MORSE]. If he were present, he would vote "yea." If I were permitted to vote, I would vote "nay." I withhold my vote.

Mr. MANSFIELD. Madam President, on this vote I have a pair with the Senator from Illinois [Mr. DIRKSEN]. If he were present, he would vote "nay." If I were permitted to vote, I would vote "yea." I therefore withhold my vote.

The result was announced—yeas 33, nays 45, as follows:

[No. 202]

YEAS—33

Anderson	Hill	Pell
Burdick	Humphrey	Proxmire
Cannon	Javits	Robertson
Carroll	Johnston	Smith, Mass.
Case, S. Dak.	Kefauver	Sparkman
Church	Long, Mo.	Stennis
Cooper	McNamara	Talmadge
Dodd	Moss	Thurmond
Douglas	Muskie	Wiley
Ervin	Neuberger	Young, N. Dak.
Hart	Pastore	Young, Ohio

NAYS—45

Aiken	Engle	McClellan
Beall	Fong	McGee
Bennett	Fulbright	Metcalf
Bible	Hickenlooper	Monroney
Boggs	Holland	Morton
Bush	Hruska	Mundt
Butler	Jackson	Prouty
Byrd, Va.	Jordan	Russell
Byrd, W. Va.	Keating	Saltonstall
Carlson	Kuchel	Schoeppel
Case, N.J.	Lausche	Scott
Cotton	Long, Hawaii	Smathers
Dworshak	Long, La.	Smith, Maine
Eastland	Magnuson	Williams, N.J.
Ellender	McCarthy	Williams, Del.

NOT VOTING—22

Allott	Goldwater	Miller
Bartlett	Gore	Morse
Bridges	Gruening	Randolph
Capehart	Hartke	Symington
Chavez	Hayden	Tower
Clark	Hickey	Yarborough
Curtis	Kerr	
Dirksen	Mansfield	

So Mr. KEFAUVER's amendments were rejected.

Mr. ENGLE. Madam President, I move that the vote by which the amendment was rejected be reconsidered.

Mr. KUCHEL. Madam President, I move that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, returned to the Senate in compliance with its request, the bill (H.R. 8414) to amend section 5011 of title 38, United States Code, to clarify the au-

thority of the Veterans' Administration to use its revolving supply fund for the repair and reclamation of personal property.

The message announced that the House had passed the bill (S. 2325) to amend the Export-Import Bank Act of 1945, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed a bill (H.R. 8765) to amend and clarify the reemployment provisions of the Universal Military Training and Service Act, and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message further announced that the Speaker pro tempore had affixed his signature to the enrolled bill (S. 1540) to amend the law establishing the Indian revolving loan fund, and it was signed by the Vice President.

HOUSE BILL REFERRED

The bill (H.R. 8765) to amend and clarify the reemployment provisions of the Universal Military Training and Service Act, and for other purposes, was read twice by its title and referred to the Committee on Armed Services.

AMENDMENT OF SHIPPING ACT OF 1916

The Senate resumed the consideration of the bill (H.R. 6775) to amend the Shipping Act of 1916, as amended, to provide for the operation of steamship conferences.

Mr. KEFAUVER. Madam President, I call up my amendment "9-1-61-G."

The PRESIDING OFFICER. The amendment of the Senator from Tennessee will be stated.

The LEGISLATIVE CLERK. On page 19, in line 15, after the word "adopt", it is proposed to insert the following:

However, the Commission shall disapprove any conference rate, fare, or charge which after hearing it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

Mr. KEFAUVER. Mr. President—

The PRESIDING OFFICER (Mr. METCALF in the chair). The Senator from Tennessee.

Mr. KEFAUVER. Mr. President, the pending amendment is a last effort to provide some protection—even though only a small amount—to American shippers.

As the bill now stands, the foreign-controlled international cartel can discriminate or can operate so as to prevent competition by an independent or a tramp steamer, and the cartel can make any rates it wants to make, unless the Maritime Commission believes they are not in the interest of the commerce of the United States.

Some protection is afforded by some of the provisions of the Shipping Act of 1916, but it will be eliminated by some of the provisions of the bill as it now stands before us.

This amendment simply provides that in considering a conference rate, fare, or charge, the Commission can disapprove the conference rate if it finds it to be so unreasonably high or low as to be detrimental to the commerce of the United States.

In other words, if they are so exorbitantly high that they are detrimental to the commerce of the United States, the Commission will be authorized to disapprove the rates; and the Commission will be authorized, also, to disapprove any rates which it may find to be so low as to have that effect.

It is not the intention of this amendment to institute a ratemaking scheme such as that of the Interstate Commerce Commission or that of some of the other regulatory agencies. But the purpose of the amendment is to have the Commission consider the rates charged by the conference; and if they are such as to affect adversely the commerce of the United States, the Commission will have the right to reject them.

Mr. President, I ask unanimous consent to have an explanation of the amendment printed at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR KEFAUVER

The amendment, which I now offer, No. 9-1-61-G, is a long first step in returning to the sensible, minimum guarantees of protection to shippers and independent carriers, provided for in the House version of H.R. 6775. It adds to the Senate Commerce Committee bill the requirement that the Maritime Commission disapprove any conference rate which is so unreasonably high or low as to be detrimental to the commerce of the United States.

I will freely admit that this amendment will tend to limit the monopoly power of the conference cartels. And, I realize that it is argued by the proponents of the bill—the Commerce Committee report—that the purpose of the conference system, and of the bill, is to protect the steamship lines—the vast majority of which are foreign owned and operated—from competition. It is claimed that competition is impractical and unworkable in the international steamship trade. This I doubt, but, that argument notwithstanding, I must insist that some minimum protection to American exporters and importers is essential.

Shipping conferences must be kept within some sort of bounds. After all, we must consider American as well as foreign interests.

It was suggested, yesterday, that foreigners engaged in foreign commerce of the United States cannot be subjected to any sort of restrictions by the U.S. Government, whatsoever. This is, of course, absurd. The U.S. Government is not so helpless. They may have the ships, but we have the trade.

The type of legislation reflected in my amendment is of precisely the same sort as that used by our Government to regulate foreign airlines, for example. Thus, section 1382 of title 49 of the United States Code requires the Civil Aeronautics Board to disapprove any rate agreement which it finds to be adverse to the public interest. The same public interest standard is applied to foreign common carriers in the communications field by section 201 of title 47 of the United States Code. Moreover, that same section provides that any charges which are not just and reasonable are unlawful—

a much sterner standard than the one I am seeking for international shipping cartels.

There can be little doubt that the dual-rate contract system facilitates the further extension of the monopoly power already possessed by the international conference cartels. Most shippers have no choice but to sign a dual-rate contract. If they do not, they will have to pay rates 10 to 20 percent higher than those paid by their competitors—and they will be effectively priced out of the market. Thus, when they sign the conference contract, they are bound to ship solely on conference vessels, and the independents which might otherwise have bid for their business, are foreclosed from the market. With the independents foreclosed, monopoly power is increased.

If, then, we must increase monopoly power in ocean shipping by authorizing the dual-rate system, let us at least impose a minimum ceiling on the extent to which such power can be wielded to the detriment of American industry. This is what my amendment does. It acknowledges that these monopolies can set high rates—even unreasonably high rates. But, the rates must not be so unreasonable as to be detrimental to the commerce of the United States.

Under the House bill and my amendment, cartels would be precluded from using unreasonably low rates as a predatory device. It was such a device that led the Supreme Court to its decision in the *Isbrandtsen* case, which is at the root of the proposed legislation. The members of the west coast United States-Japan cartel dropped rates to as low as 30 percent of normal in order to drive *Isbrandtsen* from the trade. This, the Supreme Court said, was illegal under the Shipping Act of 1916.

It should be outlawed in the future as well as in the past, because once all competition is driven from a trade, rate will skyrocket.

Mr. ENGLE. Mr. President, if the Senator from Tennessee will yield, I should like to call attention to this provision of the bill. It states that the Commission cannot approve a contract if it is detrimental to the commerce of the United States. On page 25 the committee report deals with this subject matter, as follows:

Existing law empowers the Commission to disapprove any conference agreement which it finds detrimental to the commerce of the United States. Prior boards have asserted, on occasion, that this power, though it does not speak of reasonableness of conference freight rates, authorizes disapproval of any conference's agreement if the conference's rates become so unreasonably high or low so as to become detrimental to our foreign commerce.

Apparently the threat of the use of this disapproval has served its purpose. We have not included in the bill a specific provision in regard to rates. The reason we did not is that we did not want to get the U.S. Maritime Commission into the business of rate proceedings. Anyone who knows anything about them knows what they amount to.

Furthermore, we were perfectly sure that any findings made in the course of a rate proceeding operated by the U.S. Maritime Commission would not be binding upon foreign-flag vessels. So we left the language of the bill rather general; and, as I have said, also on page 11 of the report we indicate that the Commission is directed to disap-

prove a contract that is detrimental to the commerce of the United States.

I think it perfectly obvious that if the rates are so unreasonably high or so unreasonably low as to be detrimental to the commerce of the United States, that would be sufficient reason for disapproval by the Commission. Certainly that would be as good a reason as any other for such action. In other words, the Commission is to reject conference rates if they are detrimental to the commerce of the United States. In short, if the rates are so unreasonably high or so unreasonably low as to be detrimental to the commerce of the United States, they will fall within this provision of the bill.

So I wish to ask the Senator from Tennessee whether he can state to us that it is not his intention in offering this amendment to authorize the U.S. Maritime Commission to go into a rate-setting procedure or a ratemaking procedure.

Mr. KEFAUVER. It is not the intention of the amendment to authorize the Commission to try to fix specific rates. It is the intention of the amendment to give the Commission similar authority to that the Civil Aeronautics Board has in connection with international airline rates. In that case the rates are fixed, or suggested, by the international body. Then they are submitted to the CAB, and the CAB can throw them out if it thinks they are unreasonable. That kind of concept is what I have in mind in connection with this amendment.

Mr. ENGLE. But the rates have to be unreasonable to the point that they are detrimental to the commerce of the United States.

Mr. KEFAUVER. That is what the amendment states.

Mr. ENGLE. With that understanding, and with that legislative record on the matter, I am perfectly satisfied to accept the amendment.

Mr. BUTLER. Mr. President, will the Senator yield to me for a brief observation?

Mr. KEFAUVER. Before I yield to the Senator from Maryland, let me say that the Circuit Court of Appeals has expressed the opinion, at least in dicta, that, under the Shipping Act of 1916, the Maritime Commission has the right at the present time to disapprove rates, if they are unreasonably low or unreasonably high. The Commission has given a number of opinions expressing the view that it now has this right.

My fear was that, having had that language in the House bill, and then its being deleted by the Senate, it would be considered that the present authority of the Federal Maritime Commission to throw out a rate if it was unreasonably high or unreasonably low was lost.

I ask unanimous consent to have printed at this point in the RECORD a brief explanation of the legal and legislative background of the amendment.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

EXPLANATION OF AMENDMENT

This amendment restores language originally contained in the Bonner bill. Its

purpose is to provide the new Commission with authority to protect shippers against excessive rates established in dual-rate contracts or in conference tariffs on a noncontract basis. It would also permit the Commission to safeguard other carriers or ports from discriminatory rates when set at non-compensatory levels.

The language was dropped by the Commerce Committee largely at the insistence of the foreign lines which objected to an extension of Federal jurisdiction over international rate levels. Far from a novel extension, however, the language in the amendment merely codifies existing administrative interpretation of the Shipping Act of long standing, wherein the Commission's predecessors have declared unreasonably low or high rates to be detrimental to the commerce of the United States in violation of Section 15 of the Act. (See *Edmond Weil v. Italian Line "Italia"* (1 U.S.S.B.B. 395, 398 (1935)); *Seas Shipping Co. v. American South African Line, Inc.* (1 U.S.S.B.B. 568 (1936)); *Pacific Coast-River Plate Brazil Rates* (2 U.S.M.C. 28 (1939)); *Secretary of Agriculture v. N. Atlantic Cont'l. Frt. Conf.* (4 F.M.B. 706, 739 (1955)).)

While no one would seriously advocate international rate control by the Commission, a minimum of supervision over excessive or unduly low rates in our foreign commerce is essential for the protection of American shippers, carriers, and ports, particularly inasmuch as the ultimate effect of the legislation now under consideration will be to augment the influence and power of the conferences. Moreover, the Senate's elimination of this language from the bill will no doubt be used by the conference lines at some future date as an argument that Congress has by implication repealed the power to control such rates which the Commission's predecessors have openly asserted for over 25 years.

Chairman CELLER, in his letter to me, noted:

"Additionally, the subcommittee print deletes provisions in the House bill instructing the Commission to disapprove any conference rate found to be so unreasonably high or low as to be detrimental to the commerce of the United States. I believe that the Commission possesses power under present law to disapprove such rates; at least the Federal Maritime Board has repeatedly asserted this authority throughout the course of its administration of the Shipping Act. The effect of this deletion, therefore, may be not only to discourage the new Commission from discharging a function to which it has already laid claim but may also be interpreted in some quarters as a withdrawal of congressional sanction to the very exercise of the power itself."

Mr. KEFAUVER. I yield now to the Senator from Maryland.

Mr. BUTLER. I do not know that, with the legislative history made by the Senator from California, I would object to the amendment, but I call attention to the fact that this provision would not in anywise affect a shipowner who did not want to become a member of the conference.

Mr. ENGLE. That is correct.

Mr. BUTLER. And in determining whether a rate was unreasonably high or unreasonably low, I assume the Commission would have to take into consideration the rate that had been charged.

Mr. ENGLE. I cannot answer that question.

Mr. BUTLER. It may get us into some complications.

Mr. ENGLE. What we are getting into is a standard that is to be applied, namely, that they must break a conference if it is detrimental to the commerce of the United States.

It can be detrimental to the commerce of the United States for a number of reasons. One of those reasons could be that the rate was either so unreasonably high or so unreasonably low that it was detrimental to the commerce of the United States.

What I am saying is that we already have this language in the bill, and the Senator from Tennessee simply wants to put his finger on the rate aspect of the problem as the particular item they should look at, because the Senator has been concerned about rates here for the last 2 days.

Mr. CARROLL. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. CARROLL. Is not this the purpose of the amendment of the able Senator from Tennessee? He has inserted in the RECORD four decisions from the circuit court of appeals telling what authority the Maritime Commission has and what it has a right to do. The Senator's amendment states what they ought to do with reference to a conference, not in an attempt to be a rate-fixing body, but now that it is reorganized, it has an additional responsibility to look into conferences in the manner specified in the amendment. Is that correct?

Mr. KEFAUVER. That is the exact intention. We want them to look into the matter as to whether these rates are so unreasonably high or so unreasonably low as to affect the commerce of the United States.

Mr. CARROLL. I thank the Senator.

Mr. KEFAUVER. Does the Senator accept the amendment?

Mr. ENGLE. I accept the amendment, and I yield back my time.

Mr. KEFAUVER. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. KEFAUVER. Mr. President, I call up my amendment identified as "9-1-61-M."

The PRESIDING OFFICER. The amendment offered by the Senator from Tennessee will be stated.

The LEGISLATIVE CLERK. It is proposed, on page 23, beginning with line 22, to strike out all of section 6 and renumber the remaining sections of this act to conform.

Mr. KEFAUVER. Mr. President, this amendment affects section 20 of the Shipping Act of 1916. In one part of the act it provides that freight carriers and shippers are not required to give information as to charges, the valuation of their shipments, or as to any other matters, on the ground that such information is confidential and might be of advantage to some competitor who might get it.

An amendment has been put in the bill by the Senate committee which, however, authorizes the conference to solicit the very information the previous section provides should not be given out. This information, put in the hands of a conference, could be used in a number of ways. It might be given to another shipper. It might be given to another manufacturer as to what valuation is placed on a product. There might be quite a number of trade secrets which might be distributed to competitors, to the disadvantage of American manufacturers and shippers.

The section really needs to have some other changes made in it, but I hope the Senator from California will accept the amendment and get it straightened out in conference.

Mr. ENGLE. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. ENGLE. This is a highly technical matter. It involves a question of drafting. The subject matter is explained on page 19 of the report, under section 6. We tried to work it out. I am sure a little more working on it will not hurt. For that reason, I am willing to accept the Senator's amendment and take it to conference.

Mr. KEFAUVER. I appreciate the Senator's accepting the amendment.

In order that the RECORD may have more information as to what is here involved, I ask unanimous consent that a further explanation be printed at this point in the RECORD, which includes the observation of the Attorney General in connection with this matter.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

EXPLANATION

This amendment strikes out a new provision of law proposed in the Senate bill which would permit carriers to solicit information regarding the activities of shippers in order to enforce their dual rate agreements. The dissemination of data concerning shippers can be most detrimental to the commerce of the United States. Many of the carriers belonging to conferences owe allegiance to foreign nations and do not have the interests of American shippers at heart. Who knows what use such information may be put to? If suit is brought against a shipper for violation of an agreement, the shipper will be subject to all the rules of discovery as any other individual defendant. There is no need, therefore, to create these extra-legal procedures, particularly in light of the history of abuse of this type of procedure in the past. Here is a single illustration.

The Gulf Associated Freight Conference has for years disseminated so-called "outside carrier" figures to all of its members in order to impede independent competition. These figures show the vessels of Isbrandtsen, the types of cargo carried, the shipper and the consignee. This was done despite contrary advice from the conference attorney.

Of this amendment, Deputy Attorney General White in his letter to Chairman MAGNUSON said:

"The Department of Justice also recommends the deletion of section 7 of the subcommittee print. This section would permit serious inroads to be made upon the confidential relationship between shippers and carriers established by section 20 of the 1916 Shipping Act. It must be appreciated that shippers are required to disclose certain of their private business affairs to carriers to

permit the assessment of proper tariff charges. Under section 20 of the Shipping Act the carriers are in return put under the obligation of maintaining such data in secrecy so that the shippers' business transactions are not disclosed to competitors and that such information is not used in any way to the shippers' detriment.

"The proposed legislation would depart from the traditional concept of section 20 and would cause a substantial lessening of the protection which shippers now enjoy. Under the instant bill not only could a common carrier furnish data on a shipper's transactions without the shipper's consent but a 'conference or any person, firm, corporation, or agency designated by the conference' could solicit information as to a shipper's transactions. Presumably this data could be solicited from freight forwarders, terminal operators, warehousemen, or any other persons subject to the Shipping Act who may have knowledge of the shipper's transactions. This would involve a radical change in public policy and, in our opinion, would open the way for widespread abuses and breaches of confidence in the shipping industry.

"In addition to these potential results, the bill creates an apparent paradox. While a conference or its agent would be permitted by the proposed legislation to solicit information without limitation, those other than a conference carrier who might be solicited would still be restrained by the language of section 20 from disclosing the solicited information. Thus section 7 of the instant bill would authorize the solicitation of data from persons whom, were they to divulge it, could be criminally prosecuted for doing so. Any further attempt to deal with this anomalous situation would probably create more problems than it would solve. Even if all persons subject to the Shipping Act were to be authorized to release data for the purposes stated in the bill, a terminal operator or warehouseman would obviously act at his peril in relying on a representation that confidential data he was solicited to disclose was desired solely for one of the purposes permitted by the bill.

"For the reasons indicated in the foregoing analysis, the Department of Justice respectfully urges the Committee on Commerce to amend the subcommittee print of H.R. 6775 in accordance with the recommendations contained herein."

Mr. KEFAUVER. I yield back my time.

Mr. ENGLE. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

Mr. ENGLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. DOUGLAS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOUGLAS. Is this a quorum call or a yea-and-nay vote?

The PRESIDING OFFICER. This is a quorum call.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ENGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHOEPEL. Mr. President, I call up my amendment which is at the desk and ask to have it stated.

The PRESIDING OFFICER. The amendment will be stated for the information of the Senate.

The LEGISLATIVE CLERK. On page 16, line 4, it is proposed to strike out all after the "(7)" down to and including the word "count" in line 6, and insert the following: "excludes cargo of the contract shipper which is loaded and carried in bulk without mark or count except liquid bulk cargoes, other than chemicals, in less than full shipload lots: *Provided, however,* That upon finding that economic factors so warrant, the Commission may exclude from the contract any commodity subject to the foregoing exception".

Mr. SCHOEPEL. Mr. President, I shall take less than 2 minutes.

The amendment would modify the bulk cargo provisions found on page 16 of the bill. The bulk cargo provision was offered in the committee by me, but after a careful review we came to the conclusion it was broader than necessary in order to protect the interests of the American shippers and so broad as possibly to create some grave problems for certain steamship lines or conferences.

The amendment would narrow the scope of the bulk exemption and, to the extent that the scope is reduced, would give to the Federal Maritime Commission some discretion as to determining whether or not dual-rate contracts should apply to less than shipload amounts of liquid bulk cargo which are not chemicals.

I know of no objection to the amendment. I hope it will be agreed to. I yield back my remaining time.

Mr. ENGLE. Mr. President, I have no objection to the amendment. I accept the amendment. I yield back my remaining time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment offered by the Senator from Kansas.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. MAGNUSON. Mr. President, we have a problem, which I think all of us realize.

The PRESIDING OFFICER. Does the Senator yield time from the time on the bill?

Mr. MAGNUSON. Yes, from the time on the bill.

The dual rate extension provision which Congress has reenacted for 3 years expires on September 14, which is midnight tonight. Obviously the Senator from California and the House conferees cannot get together in a conference on permanent legislation by that time.

The committee put into the bill a separate section to extend the dual rate provisions for 6 months, which we have done before, but we will not need the extension provision if the conferees can get together on permanent legislation in time.

No one is more anxious to have permanent legislation than the Senator from California and all the members of the Committee on Commerce. This is a problem we have considered in the committee since 1958, since the Supreme

Court decision. We all will strive to get permanent legislation.

I should like to ask my friend from California and my friend from Tennessee if it would be possible to obtain 30 days or 15 days or 20 days extension, so that ample time would be provided. The extension then would be during the time the Congress is in session, and the conferees would be able to meet.

Mr. CARROLL. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. CARROLL. Let us suppose the President should veto the bill. Would the Senator not be a better position with the year proviso, which the Congress previously has passed?

Mr. MAGNUSON. For double insurance the committee has reported to the Senate a bill which is on the calendar, to extend this authority for 6 months, until March 31. That was done in the hope we can pass the proposed legislation next session.

I do not like to hold out any more bait in regard to extension than necessary, because we would like to pass permanent legislation and get the problem out of the way.

Mr. CARROLL. Then the Senator does not intend to have the 6-month proviso passed until the next session of Congress?

Mr. MAGNUSON. It will be necessary to pass the 6-month proviso if we do not come to an agreement in conference between now and the time of adjournment.

Mr. CARROLL. Suppose there were an agreement of some sort, but the bill which went to the White House did not meet the demands of the Attorney General, and the President vetoed the bill. Would it not be better to put the problem over until next session by providing, say, 90 days?

Mr. MAGNUSON. The Senator has made a point. I was thinking in terms of legislative action. I hope there will not be a veto.

Of course there would be a problem if there were to be a veto.

I am sure all of us agree we cannot let the present situation continue indefinitely. Chaos would be the result.

Mr. CARROLL. What about the 6-month proviso? I simply make a suggestion in this regard.

Mr. KEFAUVER. Mr. President, if the Senator would yield, I have received letters from Representative BONNER and from Representative CELLER, in which they say they are very much against another long interim extension. They feel this problem ought to be disposed of at the present session of Congress. I do, also.

Mr. MAGNUSON. That is what I said.

Mr. KEFAUVER. I do not think the conferences ought to be frozen into the law, as they are at the present time. There are some little protections which may eventually become law, which are not now present.

I imagine the Congress probably will not be in session more than 20 days. I would agree to a 15- or 20-day provision, to give the Senator time to work out the

problem in conference. Would that be satisfactory?

Mr. MAGNUSON. Yes. I hope the Senator from Tennessee will join with us in an attempt, understanding that we must do something about the problem. No one is more desirous of permanent legislation than the Senator from Washington, the Senator from California, and all members of our committee.

Mr. CELLER will not be a member of the conference committee. Mr. BONNER is in charge of merchant marine affairs on the House side. Mr. BONNER and all members of his committee, I believe—I have talked to nearly all of them personally—are desirous of having permanent legislation. I am hopeful we can take care of the problem.

I do not like to ask the Senator from Tennessee to yield even a little more, for he has been very kind all day, but it is possible the Congress could be in session more than 20 days.

Mr. KEFAUVER. Would 30 days be enough?

Mr. MAGNUSON. Thirty days.

Mr. KEFAUVER. Very well.

Mr. MAGNUSON. I hope Congress will not be in session that long, but there are some gentlemen who sit in this row with me who say Congress may be in session more than 30 days. If the Senator will agree to the 30 days, then we can see how the conference is getting along and we can make a report to the Senate. We would still have the bill on the calendar, for the 6-month provision.

Mr. KEFAUVER. I am always delighted to go along with my friend from Washington. I agree to the 30 days.

Mr. ENGLE. Mr. President, I offer the amendment which I send to the desk and ask to have stated.

The PRESIDING OFFICER. The amendment will be stated for the information of the Senate.

The LEGISLATIVE CLERK. On page 19, line 6, after the word "thereof" it is proposed to strike out "in-" and insert "(in-".

On page 20, line 3, after the word "continues" insert a comma.

On page 21, line 17, strike out the word "effect" and insert the word "affect".

On page 22, line 3, insert quotation marks before "(2)".

Mr. ENGLE. Mr. President, these are amendments of a clerical nature to correct punctuation and I think in one instance a misspelling. I yield back any remaining time I have.

The PRESIDING OFFICER. The question is on agreeing to the technical amendments offered by the Senator from California.

The amendments were agreed to.

Mr. HUMPHREY subsequently said: Mr. President, earlier today the Senate acted on H.R. 6775, which was reported by the Committee on Commerce. A number of amendments were adopted, some of those amendments having been offered by the Senator from Tennessee [Mr. KEFAUVER].

During the debate, the Senator from Tennessee presented not only his point of view but also some of the opinions and policies expressed by the Depart-

ment of Justice. I supported the Kefauver amendments because I thought they were in the public interest.

Mr. President, I ask unanimous consent that just prior to the vote on the bill known as the dual-rate bill certain letters from the Office of the Attorney General, which have come to my attention, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 5, 1961.
Hon. ESTES KEFAUVER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KEFAUVER: This is in response to your letter of August 31, 1961, requesting the views of the Department of Justice on H.R. 6775, as it was reported by the Senate Committee on Commerce.

The Senate committee version of H.R. 6775 differs materially from the bill as passed by the House of Representatives. The bill, as it was passed by the House of Representatives, contained specific safeguards to prevent ocean steamship conferences from using dual-rate systems or other concerted activity as predatory devices to drive non-conference competition out of business. These safeguards have been omitted in the Senate committee bill. In particular the Senate committee bill has deleted: (1) The provision that the dual-rate contracts referred to in the bill shall not be intended or reasonably likely to cause the exclusion of any other carrier from the trade; and (2) the provision that the Board shall not approve agreements whose probable effect will be reasonably likely to exclude any other carrier from the trade.

The deletion of these provisions would have the effect of reversing the rule of the *Isbrandtsen* case, thereby permitting ocean steamship conferences, which are international cartels, to stifle independent competition by resort to predatory dual-rate systems. In the opinion of the Department of Justice these provisions constitute competitive safeguards which are indispensable to any reasonable enactment on this subject. The public interest would be disregarded were these provisions to be omitted.

It is our opinion that no legislation on this subject should be enacted unless such provisions are included. We urge that these provisions, as they have appeared in the House-enacted bill, be restored.

In addition, for your information I am attaching a copy of a letter from Deputy Attorney General Byron White to Senator WARREN G. MAGNUSON, which expresses in detail the views of the Department of Justice on the Senate Merchant Marine and Fisheries Subcommittee print, which is substantially similar to the Senate committee version of H.R. 6775.

Sincerely,

ROBERT KENNEDY,
Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY
ATTORNEY GENERAL,
Washington, D.C., August 16, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S.
Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: We have been furnished by Mr. Webster, counsel for the committee, with the subcommittee print of H.R. 6775, dated August 8, 1961. Mr. Webster informed us on August 3, 1961, that the Department of Justice's comments on this print of the bill would be desired by your committee. Accordingly, we are pleased to submit the following report on the subcommittee print.

H.R. 6775 would amend the Shipping Act, 1916, as amended (46 U.S.C. 801, et seq.), in various respects. The comments which follow are directed to the provisions of the subcommittee print of the bill intended to effect changes in existing law which are of serious concern to this Department.

Section 3 of H.R. 6775 would amend section 14 of the Shipping Act by adding a new section 14b which would require the Federal Maritime Board (hereinafter referred to as the "Board") to permit the use by any common carrier or conference of carriers in foreign commerce of any contract which provides lower rates to shippers or consignees who agree to give all or any fixed portion of their patronage to such carrier or conference, if such contract would not have certain proscribed effects and if it meets requirements enumerated in the bill. The effect of enactment of section 3 would be to sanction the use in the ocean shipping trades of the exclusive patronage contract/noncontract rate system, more frequently referred to as the dual-rate system.

Section 4 of the bill would amend section 15 of the Shipping Act which deals with Board approval of agreements between carriers. The principal changes concern conference agreements.

Sections 3 and 4 of the subcommittee print depart radically from the version of H.R. 6775 which was unanimously enacted by the House of Representatives on June 12, 1961. The House legislation contained provisions in sections 1 and 2 (to which secs. 3 and 4 of the subcommittee print are roughly comparable) designed to protect competing carriers, shippers and the general public from untoward effects of the use of dual-rate contracts by ocean shipping conferences. These competitive safeguards—the very heart of this legislation, in our opinion—have been eliminated, either directly or in effect, from the subcommittee print. Therefore, were H.R. 6775 to be enacted in its present form, it would give ocean shipping conferences virtually unrestricted license to employ dual-rate contracts, and other conference practices, as deliberate predatory devices to stifle the competition of carriers not affiliated with the conferences.

As the committee is aware, ocean shipping conferences operating in the foreign commerce of the United States are private organizations, somewhat akin to trade associations, organized to further the business interests of the participating steamship lines. While the conferences must file their agreements with the Board and secure approval prior to initiating joint action, because of the international nature of the shipping industry the supervision which the Board may exercise is quite limited and hardly comparable to the comprehensive regulation exercised with respect to domestic transportation industries by such agencies as the Civil Aeronautics Board and the Interstate Commerce Commission. For example, the Board has no jurisdiction over the reasonableness of rates charged by steamship lines in American foreign commerce and, except as to subsidized U.S. carriers, has no control over the adequacy, frequency or regularity of service provided by steamship lines operating to and from U.S. ports.

The most profound change in H.R. 6775 which would be effected by the subcommittee print deals with the right of nonconference carriers to enter or serve ocean trades with freedom from predatory and anticompetitive onslaughts by the conferences.

The typical shipping conference represents a tremendous concentration of power. On particularly every one of the U.S. foreign trade routes the conferences enjoy monopoly control; indeed, there are few, if any, in which the conference does not control at least 80 percent of the liner cargo movement. In most trades the percentage is much higher. Absent the antitrust exemption which Con-

gress provided in the Shipping Act, the joint rate-fixing activity and the other forms of anticompetitive collaboration typical of the conference system would do violence to the antitrust statutes. The history and weight of interpretation of the 1916 act amply demonstrate that while Congress made it possible for steamship lines to cooperate voluntarily in conference arrangements, Congress was equally determined to protect the rights of carriers who choose not to participate in conferences, as well as to insure to shippers the right to patronize nonconference carriers without retaliation from the conferences. Thus, for example, Congress specifically outlawed in section 14, first and second, of the Shipping Act two of the most vicious practices known in 1916 to have been employed by conferences against their competitors, namely, the deferred rebate and the operation of "fighting ships." In section 14, third, Congress similarly prohibited retaliation against shippers who patronize other carriers.

H.R. 6775 as enacted by the House of Representatives took into account the demand for legalization of dual-rate contracts but at the same time provided that such contracts not be used where designed to drive another carrier out of business or where the reasonably likely result of their use would be equally adverse to the public interest in maintenance of free competition. By contrast, the subcommittee print of August 8, 1961, reflects the philosophy that a carrier ought to join a conference or suffer the consequences of predatory conference action. It is this approach to legislation on dual rates which the Department of Justice finds so disturbing.

The changes effected in sections 1 and 2 of H.R. 6775 by the subcommittee print are not fully apparent until study is made of all the provisions of sections 3 and 4 of the subcommittee print, and particularly of section 4. While section 3 appears to retain in substance the language of the House-passed version which would bar approval of any dual-rate contract which is intended or will be reasonably likely to cause the exclusion of any carrier from the trade, section 4 would wholly nullify the purport of this key provision. Section 4 of the subcommittee print provides that "(i)f a common carrier is eligible but unwilling, on reasonable and equal terms and conditions, to join a conference approved by the Board and serving a trade, such carrier may not be deemed excluded from that trade, or prevented from entering it, or eliminated from it, within the meaning of all such terms as used in this section and section 14b of this act." The clear effect of the latter provision would be to deprive the nonconference carrier of the protection against unfair exclusion from a trade whenever the nonconference carrier has chosen to remain independent of the conference. Since almost every conference in the U.S. foreign trade would welcome the membership of the nonconference carrier in order to eliminate the latter's competition, it is impossible to conceive of a situation involving a nonconference carrier in competition with a conference which would not fall within the above-quoted language of the subcommittee print. In sum, therefore, the Committee on Commerce, in considering adoption of the proposed language of the subcommittee print vis-a-vis the language of the House enactment, will be deciding which concept shall henceforth apply to the ocean shipping industry: freedom of opportunity for all steamship lines, whether as conference members or independent operators, according to individual preference, as opposed to compulsory conference membership resulting in elimination of competition and monopolistic freight rates.

The Department of Justice considers indispensable to any reasonable enactment on dual-rate and steamship conference agreements the inclusion of language unequivocally

barring the approval of such agreements where they are intended or will be reasonably likely to cause the exclusion of another carrier from the trade. Assistant Attorney General Loevinger indicated in his testimony before the Merchant Marine and Fisheries Subcommittee on August 3, 1961, how important are the actual and potential benefits of this legislative protection to American carriers, shippers, and the general public. Judge Loevinger noted that, even though at a given moment there may be no American carrier operating independently of the conferences, the ability of an American carrier to withdraw without fear of conference retaliation provides it with leverage within the conference which may be exerted to avert action which may be adverse to its interests or to the foreign commerce of the United States. This is of extreme significance to American carriers, which account for only a small vote in virtually every important conference serving our foreign trade.

It is important also to bear in mind that in the ocean trades competition is the only practical restraint on unduly high freight rates. In this connection, the Under Secretary of State submitted to the Merchant Marine and Fisheries Committee on August 3, 1961, data obtained from foreign governments in response to the State Department's inquiry of them how reasonableness of rates is assured in waterborne commerce. Eight foreign nations—Belgium, Denmark, Federal Republic of Germany, Finland, Italy, Netherlands, Norway, and Sweden—of the 11 questioned replied that they rely on free competition to achieve reasonable rates. The subcommittee print, however, would leave the way open for shipping conferences to eliminate the very competition which the United States has historically fostered and which a majority of foreign nations espouse by withdrawing protection of the rights of the competitor who may choose to offer rate competition.

We would further direct the committee's attention to the example cited in Assistant Attorney General Loevinger's testimony of the unconscionable rate charged on an important commodity moving in American foreign commerce when there was no independent carrier providing competition in the particular trade. The entry of an independent carrier brought about a reduction of the rate from \$80 to \$40, the latter level being one which, by the admission of one of the American carriers involved, still permitted profitable operations.

For the reasons outlined above, we urge the committee to delete the provision appearing in the subcommittee print beginning at line 22 on page 5, which completely nullifies the protection for nonconference carriers, contained in the House-passed version. This important competitive safeguard, but for the language beginning at line 22 on page 5, would be preserved in the subcommittee print. We deem it essential that these protective provisions be retained as they were in the House-enacted version of H.R. 6775.

There are other provisions of the subcommittee print on which comment should also be made. Whereas section 1 of the House enactment would require the proponents of dual-rate systems to establish in Board proceedings that the proposed dual-rate contract would not have the proscribed effects, the subcommittee print would shift the burden to opponents thereof or to the Board. The latter would have to prove by the preponderance of the evidence that a dual-rate contract would contravene the language of the bill. We believe that the House approach is the more reasonable. It places the burden where it belongs, that is, upon the proponent and expected beneficiary of the proposed dual-rate contract.

The subcommittee print also changes the House-enacted provisions dealing with dual-rate contracts by inserting the word "com-

mon" before the word "carrier" in several places. The insertion of the word "common" before the word "carrier" on line 17 of page 2 would limit the protection against exclusionary dual-rate systems to common carriers and would appear to permit the use of dual-rate contracts which are designed or are likely to exclude a carrier which is not a common carrier. We are aware of no justification for differentiating between the types of carrier that might be adversely affected by conference use of dual-rate contracts. We therefore recommend that the committee delete the word "common" wherever it has been added to H.R. 6775 by the subcommittee print. This comment would also apply to the addition of the word "common" on line 17 of page 5 of the print.

We turn now to the language of the subcommittee print which relates to provisions which much be expressly incorporated in any dual-rate contract to be lawful under the proposed legislation.

The subcommittee print would strike from H.R. 6775 the provision that prohibits dual-rate contracts from covering shipments of goods where the contract shipper has no legal right to select the carrier. The effect of this deletion will be to create endless controversy as to whether or not certain shipments, notably shipments of goods sold on f.o.b. and f.a.s. terms, are covered by approved dual-rate contracts. Without the provision contained in the House version, the way is left open for conferences to charge contract shippers with breach of their dual-rate contracts when they sell goods to buyers who elect to ship via non-conference carriers. The deletion of this provision could be construed to permit the conferences to forbid contract shippers from doing business with anyone who will not surrender his right to make his own shipping arrangements. We urge that this provision be restored to the bill in order that it be made clear that Congress does not intend to allow the shipping conferences to dictate the terms upon which one merchant must sell to another.

Another provision deleted from the House enactment which should be reinstated is that precluding any requirement that shippers divert their shipments from natural routings. The purpose of this provision was to insure shippers' freedom to choose the ports from which and to which to ship their goods. It is one thing for Congress to permit a system of contracts under which shippers must promise that when they ship from a particular port they will use conference vessels, but it is a wholly different thing to permit conferences to compel shippers to ship from a particular port when it may be more economical for them to ship from other ports which the conferences may not happen to serve. The Department of Justice recommends that the House provision on this point be reinstated in H.R. 6775.

We are also concerned with clause 3 of section 3 of the subcommittee print. This clause would limit damages recoverable for a shipper's breach of a dual-rate contract to actual damages, but the proviso permits liquidated damages not to exceed the freight charges at the contract rate, less cost of handling.

We reiterate our previous objection to the proviso in this clause. It is our understanding that clause 3 is in the bill for the purpose of barring the past practice of disguising oppressive penalties in the form of liquidated damages. At the same time it was desired to permit liquidated actual damages where desired by the parties so as to avoid possible future uncertainties and controversies in situations where actual damages were difficult to prove.

We are convinced that the present formula will not achieve the objective of eliminating penalties. The proviso assumes that the

actual damages for a shipper's breach of a dual-rate contract are the same as damages resulting from breach of a space reservation or booking contract. As was made clear in Assistant Attorney General Loevinger's testimony on August 3, 1961, the present proviso, which in effect equates the two types of damage, can only result in damages for a shipper's dual-rate contract breach far in excess of actual damages. In its present form, therefore, the bill still leaves the way open for unduly harsh and punitive results.

While we recognize that any effort to specify liquidated damages may not in all cases result in an approximation of the actual damages, we observe that no liquidated-damage formula has been advanced which does not also constitute a severe penalty all out of proportion to the actual damages suffered by the conference or its members. Since the demand is for a measure which is certain, is fair to the carrier, but at the same time not oppressively punitive, we respectfully suggest that the committee place a maximum on liquidated damages of $1\frac{1}{2}$ times the spread between contract and noncontract rates. This, we believe, is a fair and reasonable approach to the problem. It would deter a shipper from disregarding his dual-rate contractual obligations, but would not place him in jeopardy of being required, in the event of breach, to pay the conference an amount clearly having no logical relation to the loss which the conference can be considered to have sustained.

Clause 5 of section 3 of the subcommittee print permits the approval of dual-rate systems where the maximum spread between contract and noncontract rates is 15 percent. We view any spread in excess of 10 percent as unwarranted. In this connection, it should be noted that the House report indicated a problem in determining a maximum spread figure which would not penalize a shipper who does not choose to limit his shipments to conference vessels and which at the same time would provide a reasonable inducement to execute such agreements. It is the considered view of the Department of Justice that the 15-percent maximum spread provided for in clause 5 of section 3 of the subcommittee print does not strike such balance. Rather, it weighs heavily on the side of coercing shippers to limit their cargoes to conference vessels. All would agree that shippers should be provided with a realistic choice in deciding whether to contract to ship exclusively on conference vessels or whether to retain their right to ship on both conference and non-conference vessels as they choose. There is good reason to believe that a spread of 15 percent would foreclose this choice.

While the difference between a 10-percent and a 15-percent spread may seem to be solely a matter of degree, the fact is that in the highly competitive and price-conscious world of international trade an additional handicap of 5 percentage points in freight rate markedly reduces a shipper's ability to determine whether he would prefer freedom to use both conference and nonconference vessels rather than being limited to the use of one type of service. We recommend that a 10-percent maximum be written into this clause by the committee.

We would next direct the committee's attention to the provision of section 4 of the bill which in effect would permit Board approval of agreements between conferences serving different trades which are competitive, with the proviso that each conference retain what the bill refers to as the "right of independent action." We urge the committee to delete the proviso thereby clearly prohibiting any interconference agreements. While the existing language of the bill gives a conference the right to take independent action on matters embraced within

the agreement, it nevertheless permits all parties to an agreement to establish a uniform policy on rates and other competitive matters when it serves their purpose to do so. The Department of Justice is convinced that it is not in the public interest to permit agreements which may create a virtual monopoly of ocean transportation to or from this country. Congress should not sanction private rate-fixing schemes or supercartels which could embrace every port through which the foreign commerce of the United States is conducted. Such an arrangement would deny shippers the cost savings resulting from their location on or in proximity to a particular coastal range.

Another amendment to section 15 of the Shipping Act is the provision of section 4 of the subcommittee print requiring conferences to police their agreements. We question the policy requiring conferences to engage in private "policing." Congress should neither require nor permit cartels, even the ones in ocean shipping, to use penalties to coerce compliance with their cartel agreements. Nor do we believe Congress should delegate to cartels the responsibility for enforcing our maritime laws, especially in view of the potential harm that could be caused by unwarranted coerced disclosure of confidential business records to competitors and from the assessment by the cartels of harsh or discriminatory penalties.

Section 5 of the subcommittee print provides that agreements filed with the Board after passage of the proposed act are lawful until disapproved by the Board. There is no limit set on the period within which the Board must act on such agreements. The exemption from the antitrust laws of any cartel agreement, and certain cartel tying devices, is a most serious matter and a departure from our free-enterprise principle that competition should be the rule of trade. No dual-rate agreement should be permitted to go into effect for an unlimited period.

The Chairman of the Board, in his testimony before the House committee, indicated that a 1-year period would be a realistic one within which to review and dispose of the number of agreements which are likely to be filed after passage of this legislation. If it takes the Board a longer period to review such agreements, at least the unsupervised dual-rate system cannot continue to be employed during any such delay. On the other hand, under the provision in the subcommittee print, any delays experienced by the Board would have the effect of permitting the unsupervised dual-rate system to continue in effect. Clearly, this would encourage dilatory tactics and tend to postpone indefinitely the clarification of status of all fuel-rate contracts which for the past 3 years Congress has been seeking to provide.

The Department of Justice also recommends the deletion of section 7 of the subcommittee print. This section would permit serious inroads to be made upon the confidential relationship between shippers and carriers established by section 20 of the 1916 Shipping Act. It must be appreciated that shippers are required to disclose certain of their private business affairs to carriers to permit the assessment of proper tariff charges. Under section 20 of the Shipping Act the carriers are in return put under the obligation of maintaining such data in secrecy so that the shippers' business transactions are not disclosed to competitors and that such information is not used in any way to the shippers' detriment.

The proposed legislation would depart from the traditional concept of section 20 and would cause a substantial lessening of the protection which shippers now enjoy. Under the instant bill not only could a common carrier furnish data on a shipper's transactions without the shipper's consent but a conference or any person, firm, corporation,

or agency designated by the conference could solicit information as to a shipper's transactions. Presumably this data could be solicited from freight forwarders, terminal operators, warehousemen, or any other persons subject to the Shipping Act who may have knowledge of the shipper's transactions. This would involve a radical change in public policy and, in our opinion, would open the way for widespread abuses and breaches of confidence in the shipping industry.

In addition to these potential results, the bill creates an apparent paradox. While a conference or its agent would be permitted by the proposed legislation to solicit information without limitation, those other than a conference carrier who might be solicited would still be restrained by the language of section 20 from disclosing the solicited information. Thus section 7 of the instant bill would authorize the solicitation of data from persons whom, were they to divulge it, could be criminally prosecuted for doing so. Any further attempt to deal with this anomalous situation would probably create more problems than it would solve. Even if all persons subject to the shipping act were to be authorized to release data for the purposes stated in the bill, a terminal operator or warehouseman would obviously act at his peril in relying on a representation that confidential data he was solicited to disclose was desired solely for one of the purposes permitted by the bill.

For the reasons indicated in the foregoing analysis, the Department of Justice respectfully urges the Committee on Commerce to amend the subcommittee print of H.R. 6775 in accordance with the recommendations contained herein.

The Budget Bureau has advised that it has no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BYRON WHITE,
Deputy Attorney General.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? [Putting the question.]

The bill (H.R. 6775) was passed.

The title was amended, so as to read: "An act to amend the Shipping Act, 1916, as amended, to authorize ocean common carriers and conferences thereof serving the foreign commerce of the United States to enter into effective and fair dual rate contracts with shippers and consignees, and for other purposes."

Mr. ENGLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. KUCHEL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ENGLE. Mr. President, I move that the Senate insist on its amendments, ask for a conference thereon with the House of Representatives, and that the Chair appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. PROXMIRE in the chair) appointed Mr. MAGNUSON, Mr.

ENGLE, Mr. McGEE, Mr. BUTLER, and Mr. MORTON conferees on the part of the Senate.

AMENDMENT OF EXPORT-IMPORT BANK ACT OF 1945

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 2325) to amend the Export-Import Bank Act of 1945, which were, on page 1, lines 8 and 9, strike out "reinsure against risks of loss arising in connection with export transactions" and insert "reinsure United States exporters and foreign exporters doing business in the United States in an aggregate amount not in excess of \$1,000,000,000 outstanding at any one time against political and credit risks of loss arising in connection with United States exports"; on page 2, line 7, after "Act," insert "Fees and premiums shall be charged in connection with such contracts commensurate, in the judgment of the Bank, with the risks covered," and on page 2, strike out lines 15 through 17, inclusive.

Mr. ROBERTSON. Mr. President, the principal change which the House made in the Senate bill was to eliminate the 5-year extension of the life of the Export-Import Bank. Under present law the Bank's lending authority ends June 30, 1963. The Senate bill would have extended it to June 30, 1968.

I am reluctant to accept this amendment, but I am sure that no one in the House or in the Senate or in the Export-Import Bank thinks for a minute that not extending the Bank's life at this time raises any question whatever as to our intention to extend it well before its expiration.

The House also placed a limit of \$1 billion on the aggregate contractual liability of the Bank for the guarantees and insurance under the amended provision. This figure seems more than ample for the time being. It can be amended later if need be.

The other changes which are of a more technical nature are described in a letter which I received yesterday from Mr. Linder, the President of the Bank. In this letter Mr. Linder states:

The Bank believes that the amendments will not interfere with the administration of the export credit guarantee program, and we would appreciate your assistance in obtaining Senate approval of the bill, as amended.

I ask unanimous consent that this letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 13, 1961.

HON. A. WILLIS ROBERTSON,
Chairman, Banking and Currency Committee, U.S. Senate.

DEAR SENATOR ROBERTSON: On September 13, 1961, the House of Representatives approved S. 2325 with several amendments. The Bank believes that the amendments will not interfere with the administration of the export credit guarantee program and we would appreciate your assistance in obtaining Senate approval of the bill, as amended.

The amendments which were adopted by the House are as follows:

1. The aggregate contractual liability of the Bank thereunder for such guarantees

and insurance shall not exceed \$1 billion outstanding at any one time. We believe that the amount of such guarantees and insurance will not exceed this figure in the near future and therefore we do not expect the limitation to create a present problem.

2. The House deleted the provision extending the life of the Bank from June 30, 1963, to June 30, 1968. Since the life of the Bank continues until 1963, we believe that next year will be sufficient time to request an extension.

3. The bill was also amended to provide that guarantees and insurance will be issued for the benefit of "United States exporters or foreign exporters doing business in the United States." This language was inserted to preclude tax haven corporations from receiving the benefits of such guarantees and insurance. The Bank is quite agreeable to this limitation and does not believe it will prejudice the administration of the program.

4. The bill was amended to limit coverage to "United States exports." This change is entirely consonant with the Bank's policy and will cause no problem.

5. The words "political and credit" were added to show the type of risks with regard to which the Bank may guarantee, insure, co-insure, and reinsure. These words will not create any difficulty for the Bank.

6. A provision was added to the bill requiring that appropriate fees and premiums be charged for the guarantees and insurance. It has been our intention to do so and we conceive of no difficulty arising from this amendment.

On balance, therefore, the Bank is quite satisfied with the bill as approved by the House; and we suggest, if you are agreeable, that the Senate consider the bill as amended by the House. I would like to take this opportunity to thank you for your kind and helpful assistance in endeavoring to obtain enactment of this legislation.

Sincerely yours,

HAROLD F. LINDER.

Mr. ROBERTSON. Mr. President, I move that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Virginia.

The motion was agreed to.

AMENDMENT OF SMALL BUSINESS INVESTMENT ACT OF 1958—CONFERENCE REPORT

Mr. PROXMIRE. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 902) to amend the Small Business Investment Act of 1958, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. BURDICK in the chair). The report will be read for the information of the Senate.

The legislative clerk read the report. (For conference report, see House proceedings of Sept. 13, 1961, pp. 18053-18054, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. PROXMIRE. Mr. President, the House and Senate conferees met Wednesday, September 13, 1961, on S. 902. The conferees agreed as follows on the differences between the two bills:

report prior to December 31, 1963; S. J. Res. 95, setting September 17 of each year as General von Steuben Memorial Day; S.J. Res. 27, designating the month of May of each year as Senior Citizens Month; S.J. Res. 91, to establish the St. Augustine Quadricentennial Commission; H.J. Res. 358, to establish National Poison Prevention Week; H.J. Res. 110, to establish the George Washington Carver Commemorative Commission; an original resolution providing additional funds for Subcommittee on Juvenile Delinquency; four private immigration bills (S. 295, 1792, 1888, and 2096); and five private claims bills (S. 67, 1348, 1441, H.R. 1333, and 4917).

DRUG INDUSTRY

Committee on the Judiciary: The Antitrust and Monopoly Subcommittee continued its hearings on S. 1552, to amend the antitrust laws with respect to the manufacture and distribution of drugs, having as its witness Lee Loevinger, Assistant Attorney General, Antitrust Division, Department of Justice.

Hearings were recessed subject to call.

NOMINATION

Committee on the Judiciary: Subcommittee held hearings on the nomination of Paul D. Shriver, of Colorado, to be judge of the district court of Guam.

House of Representatives

Chamber Action

Bills Introduced: 14 public bills, H.R. 9243-9256; 7 private bills, H.R. 9257-9263; and 5 resolutions, H.J. Res. 577, H. Con. Res. 395 and 396, and H. Res. 465 and 466, were introduced. Pages 18594-18595

Bills Reported: Reports were filed as follows:

S. 1186, relating to identification mark for gold and silver articles, amended (H. Rept. 1190);

S. 1459, to amend the law relating to longevity step increases for postal employees (H. Rept. 1191);

H. Res. 466, providing for consideration of and 1 hour of debate on H.J. Res. 569, to waive certain provisions of the Atomic Energy Act of 1954 so as to permit the agreement for cooperation between the United States and France to be made immediately effective (H. Rept. 1192);

H.R. 8652, relating to income tax treatment of certain losses sustained in converting from street railway to bus operations, amended (H. Rept. 1193);

Conference report on H.R. 6845, relating to Coast Guard oceanographic research (H. Rept. 1194);

Conference report on H.R. 8072, District of Columbia appropriation bill for fiscal year 1962 (H. Rept. 1195);

H.R. 221, relating to imposition of tire tax on tires delivered to manufacturer's retail outlet (H. Rept. 1196);

Conference report on H.R. 8666, to provide for the improvement and strengthening of the international relations of the United States by promoting better mutual understanding among the peoples of the world through educational and cultural exchanges (H. Rept. 1197);

Conference report on H.R. 2010, amending the Agricultural Act of 1949 to extend the Mexican farm labor program (H. Rept. 1198); and

Conference report on H.R. 4317, to amend the Internal Revenue Code of 1954 and incorporate therein provisions for the payment of annuities to widows and certain dependents of the judges of the Tax Court of the U.S. (H. Rept. 1199). Page 18594

Steamship Conferences: Disagreed to Senate amendments to H.R. 6775, to amend the Shipping Act of 1916, as amended, to provide for the operation of steamship conferences, agreed to a conference requested by the Senate, and appointed as conferees Representatives Bonner, Garmatz, Downing, Casey, Tollefson, Ray, and Mailliard. Page 18527

Cuba: By a voice vote the House passed with amendments H.R. 8465, to prohibit the shipment in interstate or foreign commerce of articles imported into the United States from Cuba. Pages 18527-18531

Supplemental Appropriations: By a division vote of 218 yeas to 15 nays the House passed H.R. 9169, making supplemental appropriations for the fiscal year ending June 30, 1962. A recommittal motion designed to increase by \$20 million the "Housing for the Elderly Fund" had been rejected previously by a voice vote.

Adopted amendments that added \$14,789,476 for Indian Claims Commission and added \$150 million for airport grants in aid.

Also adopted an amendment that provided \$150,000 for completion of U.S.S. *Arizona* memorial in Hawaii.

Several provisions were deleted from the bill when points of order against them were sustained.

The bill as reported from the Committee on Appropriations provided funds totaling \$646,771,447. Pages 18531-18546

Export Control: Announcement was made by the Speaker pro tempore that he had appointed as members of the Select Committee To Conduct an Investigation and Study of the Administration, Operation,

and Enforcement of the Export Control Act of 1949, and Related Acts, the following Members of the House: Representatives Kitchin, Chairman; Boland, Sisk, Lipscomb, and Latta.

Page 18546

Small Business: The House adopted the conference reports on the following two bills and thus cleared them for Presidential action:

H.R. 8762, to amend the Small Business Act to increase the amount available for regular business loans thereunder; and

S. 902, to amend the Small Business Investment Act of 1958.

Pages 18546-18550

Cancer: Adopted H.J. Res. 576, to designate calendar year 1962 as Cancer Progress Year.

Pages 18550-18552

Calendar Wednesday: Agreed to dispense with Calendar Wednesday business of September 20.

Page 18558

Foreign-Aid Appropriations: Disagreed to Senate amendments to H.R. 9033, making appropriations for foreign assistance and related agencies for fiscal year 1962, agreed to a conference requested by the Senate, and appointed as conferees Representatives Passman, Gary, Cannon, Taber, and Rhodes of Arizona.

Page 18558

Mexican Farm Labor Program: By a record vote of 243 yeas to 135 nays the House adopted H. Res. 455, a rule providing for taking from the Speaker's table H.R. 2010, amending the Agricultural Act of 1949 to extend the Mexican farm labor program, disagreeing to the Senate amendment, and agreeing to the conference requested by the Senate. The Speaker pro tempore appointed Representatives Poage, Gathings, Abbitt, Belcher, and Teague of California conferees on the part of the House.

Pages 18552-18557

Military Construction Appropriations: The House insisted on its disagreement to Senate amendment No. 2 to H.R. 8302, the military construction appropriation bill; agreed to further conference with the Senate; and appointed as conferees Representatives Sheppard, Sikes, Cannon, Jonas, and Taber.

Page 18573

Postage Revision: By a record vote of 142 yeas to 222 nays the House rejected a motion ordering the previous question on H. Res. 464, the closed rule waiving points of order with 2 hours of debate and providing for the consideration of a committee substitute amendment to H.R. 7927, to adjust postal rates. Subsequently, an amendment was adopted providing for an open rule after which H. Res. 464 was adopted and further action on the legislation was deferred to a later date.

Pages 18564-18573

Quorum Call and Record Votes: During the proceedings of the House today one quorum call and two record votes developed and they appear on pages 18526, 18557, 18571-18572.

Program for Saturday: Adjourned at 6:47 p.m. until Saturday, September 16, at 11 a.m., when the House will consider H.R. 9188, to establish a U.S. Arms Control Agency (2 hours of debate); and H.J. Res. 569, proposed agreement for cooperation between the U.S. Government and the Government of the French Republic (1 hour of debate); and H.R. 6360, to authorize an additional Assistant Secretary of Commerce (1 hour of debate).

Committee Meetings

PARACHUTE CHAMPIONSHIPS

Committee on Foreign Affairs: Subcommittee on International Organizations and Movements met in executive session on various parachute championship resolutions. No final action was taken.

JAMES MADISON MEMORIAL

Committee on Public Works: Subcommittee on Public Buildings and Grounds held a hearing on H.J. Res. 500, to authorize the Architect of the Capitol to construct a memorial to James Madison. Heard testimony from Representative Smith of Virginia; an Assistant Architect of the Capitol; and officials from the Library of Congress.

SUBCOMMITTEE BUSINESS

Committee on Public Works: Subcommittee on Real Property Acquisition held an executive organizational meeting.

POULTRY INDUSTRY

Select Committee on Small Business: Special Subcommittee on the Poultry Industry heard an Agriculture official on small business problems in the poultry industry. Adjourned subject to call of the Chair.

Joint Committee Meetings

APPROPRIATIONS—D.C.

Conferees, in executive session, agreed to file a conference report on the differences between the Senate- and House-passed versions of H.R. 8072, fiscal 1962 appropriations for the District of Columbia.

COMMUNITY HEALTH

Conferees met in executive session to resolve the differences between the Senate- and House-passed versions of H.R. 4998, proposed Community Health Services and Facilities Act of 1961, but did not reach final agreement, and will meet again on Monday, September 18.

EDUCATIONAL AND CULTURAL EXCHANGE

Conferees, in executive session, agreed to file a conference report on the differences between the Senate- and House-passed versions of H.R. 8666, proposed Mutual Educational and Cultural Exchange Act of 1961.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE
(For information only;
should not be quoted
or cited)

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HIGHLIGHTS: Senate passed supergrades bill. Several Senators debated merits of milk sanitation standards bill. Sen. Long, Mo., urged aid for poultry producers. Senate Committee reported public works appropriation bill. House debated conference report on Peace Corps bill. House received conference report on bill to extend time for purchase of retirement credit by ASC county committee employees.

HOUSE

- 1. PERSONNEL.** Received the conference report on S. 739, to remove the present requirement, contained in the Pay Act of 1960, that ASC county committee employees with past service purchase credit for such service within a two-year period from July 10, 1960, to modify the method of computing interest earnings of special Treasury issues held by the civil service retirement and disability fund, and to provide for permanent indefinite appropriations for the retirement fund (H. Rept. 1240). pp. 19249-50
- 2. PEACE CORPS.** Began debate on the conference report on H. R. 7500, to provide for a permanent Peace Corps. pp. 19251-4
- 3. FORESTRY.** Passed under suspension of the rules S. 302, to authorize the appropriation of \$2 million additional for the purchase of land in the Superior National Forest, Minn. This bill will now be sent to the President. pp. 19263-5
- 4. BOTANIC GARDEN.** Began debate on H. R. 5628, to provide for a study and investigation of the desirability and feasibility of establishing and maintaining the

National Tropical Botanic Garden. pp. 19261-3

5. VIRGIN ISLANDS. Conferees were appointed on H. R. 4750, to increase the borrowing authority of the Virgin Islands Corporation. Senate conferees have not been appointed. p. 19275
6. STEAMSHIP CONFERENCES. Received the conference report on H. R. 6775, to provide for the operation of steamship conferences (H. Rept. 1247). pp. 19289-91
7. MARKETING. Received from the Government Operations Committee a report on consumer protection activities of Federal departments and agencies (H. Rept. 1241). p. 19293
8. WATERSHEDS. Received from the Budget Bureau plans for works of improvement relating to the following watersheds: Escondido Creek, Calif.; Upper Quaboag River, Mass.; Gering Valley, Nebr.; Gum Neck, N. C.; Wagon Creek, Okla.; Pine Creek, Tenn.; and northeast tributaries of the Leon River, Tex.; to Agriculture Committee. p. 19292
Received from the Budget Bureau plans for works of improvement relating to the Box Elder Creek, Mont. watershed; to Public Works Committee. pp. 19292-3
9. FARM PROGRAM. Rep. Latta outlined some of the provisions of the Agricultural Act of 1961, and said, "I opposed the passage of most of them as being unnecessary, unwise, and discriminatory." pp. 19278-9
10. COTTON. Rep. Wickersham discussed the problems of the cotton farmers and the 1962 national cotton allotment and said, "I would see no reason to estimate consumption and exports for the 1962 crop year at less than those for the 1961 crop year." pp. 19279-80
11. FOREIGN TRADE. Rep. Burleson discussed U. S. agricultural exports and the Common Market, saying, "maintaining and expanding agricultural exports is vital to the prosperity of agriculture and the Nation." p. 19280

SENATE

12. PERSONNEL. Passed with amendments S. 1732, to increase the limitation on the number of supergrade and high level scientific positions (pp. 19203, 19233-39). Agreed to an amendment by Sen. Johnston to amend the Executive Pay Act of 1956 to increase the salaries of certain positions from \$17,500 to \$19,000, including the Administrator of the Farmers Home Administration, the Administrator of the Soil Conservation Service, the Chief of the Forest Service, and the Manager of the Federal Crop Insurance Corporation. The amendment also amends the Farm Credit Act to provide that the salaries of the three positions of deputy governor shall be fixed by the Board at a rate not exceeding the maximum schedule rate of the General Schedule of the Classification Act of 1949 (rather than the present fixed salary of \$17,500). (pp. 19233-4). Substituted the language of S. 1732 as passed for that of similar bill H. R. 7377 and passed H. R. 7377. Further consideration of S. 1732 was indefinitely postponed. Conferees were appointed. (p. 19239).
13. PUBLIC WORKS APPROPRIATION BILL, 1962. The Appropriations Committee reported with amendments this bill, H. R. 9076 (S. Rept. 1097). p. 19171
14. ECONOMICS. The Foreign Relations Committee reported with amendment S. Con. Res 41, endorsing the World Economic Progress Exposition (S. Rept. 1088). p. 1917

STEAMSHIP CONFERENCES

-----Ordered to be printed

Mr. BONNER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 6775]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That the Shipping Act, 1916, is amended by adding after section 14a a new section to read as follows:

"SEC. 14b. Notwithstanding any other provisions of this Act, on application the Federal Maritime Commission (hereinafter 'Commission'), shall, after notice, and hearing, by order, permit the use by any common carrier or conference of such carriers in foreign commerce of any contract, amendment, or modification thereof, which is available to all shippers and consignees on equal terms and conditions, which provides lower rates to a shipper or consignee who agrees to give all or any fixed portion of his patronage to such carrier or conference of carriers unless the Commission finds that the contract, amendment, or modification thereof will be detrimental to the commerce of the United States or contrary to the public interest, or unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, and provided the contract, amendment, or modification thereof, expressly (1) permits prompt release of the contract shipper from the contract with respect to any shipment or shipments for

which the contracting carrier or conference of carriers cannot provide as much space as the contract shipper shall require on reasonable notice; (2) provides that whenever a tariff rate for the carriage of goods under the contract becomes effective, insofar as it is under the control of the carrier or conference of carriers, it shall not be increased before a reasonable period, but in no case less than ninety days; (3) covers only those goods of the contract shipper as to the shipment of which he has the legal right at the time of shipment to select the carrier: Provided, however, That it shall be deemed a breach of the contract if, before the time of shipment and with the intent to avoid his obligation under the contract, the contract shipper divests himself, or with the same intent permits himself to be divested, of the legal right to select the carrier and the shipment is carried by a carrier which is not a party to the contract; (4) does not require the contract shipper to divert shipment of goods from natural routings not served by the carrier or conference of carriers where direct carriage is available; (5) limits damages recoverable for breach by either party to actual damages to be determined after breach in accordance with the principles of contract law: Provided, however, That the contract may specify that in the case of a breach by a contract shipper the damages may be an amount not exceeding the freight charges computed at the contract rate on the particular shipment, less the cost of handling; (6) permits the contract shipper to terminate at any time without penalty upon ninety days' notice; (7) provides for a spread between ordinary rates and rates charged contract shippers which the Commission finds to be reasonable in all the circumstances but which spread shall in no event be more than 15 per centum of the ordinary rates; (8) excludes cargo of the contract shippers which is loaded and carried in bulk without mark or count except liquid bulk cargoes, other than chemicals, in less than full shipload lots: Provided, however, That upon finding that economic factors so warrant, the Commission may exclude from the contract any commodity subject to the foregoing exception; and (9) contains such other provisions not inconsistent herewith as the Commission shall require or permit. The Commission shall withdraw permission which it has granted under the authority contained in this section for the use of any contract if it finds, after notice and hearing, that the use of such contract is detrimental to the commerce of the United States or contrary to the public interest, or is unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors. The carrier or conference of carriers may on ninety days' notice terminate without penalty the contract rate system herein authorized, in whole or with respect to any commodity: Provided, however, That after such termination the carrier or conference of carriers may not reinstitute such contract rate system or part thereof so terminated without prior permission by the Commission in accordance with the provisions of this section. Any contract, amendment, or modification of any contract not permitted by the Commission shall be unlawful, and contracts, amendments, and modifications shall be lawful only when and as long as permitted by the Commission; before permission is granted or after permission is withdrawn it shall be unlawful to carry out in whole or in part, directly or indirectly, any such contract, amendment, or modification. As used in this section, the term 'contract shipper' means a person other than a carrier or conference of carriers who is a party to a contract the use of which may be permitted under this section."

SEC. 2. Section 15, *Shipping Act, 1916*, is amended to read as follows:

"SEC. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements.

"The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

"The Commission shall disapprove any such agreement, after notice and hearing, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

"Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by section 14b of this Act which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, shall be

permitted to take effect without prior approval upon compliance with the publication and filing requirements of section 18(b) hereof and with the provisions of any regulations the Commission may adopt.

"Every agreement, modification, or cancellation lawful under this section, or permitted under section 14b, shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', and amendments and Acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', and amendments and Acts supplementary thereto.

"Whoever violates any provision of this section or of section 14b shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action."

SEC. 3. Notwithstanding the provisions of sections 14, 14b, and 15, Shipping Act, 1916, as amended by this Act, all existing agreements which are lawful under the Shipping Act, 1916, immediately prior to enactment of this Act, shall remain lawful unless disapproved, canceled, or modified by the Commission pursuant to the provisions of the Shipping Act, 1916, as amended by this Act: Provided, however, That all such existing agreements which are rendered unlawful by the provisions of such Act as hereby amended must be amended to comply with the provisions of such Act as hereby amended, and if such amendments are filed for approval within six months after the enactment of this Act, such agreements so amended shall be lawful for a further period of not to exceed one year after such filing. Within such year the Commission shall approve, disapprove, cancel or modify all such agreements and amendments in accordance with the provisions of this Act.

SEC. 4. Section 18, Shipping Act, 1916, is hereby amended as follows:

(a) Insert "(a)" immediately after the section number "18".

(b) Add the following subsection 18(b):

"(b)(1) From and after ninety days following enactment hereof every common carrier by water in foreign commerce and every conference of such carriers shall file with the Commission and keep open to public inspection tariffs showing all the rates and charges of such carrier or conference of carriers for transportation to and from United States ports and foreign ports between all points on its own route and on any through route which has been established. Such tariffs shall plainly show the places between which freight will be carried, and shall contain the classification of freight in force, and shall also state separately such terminal or other charge, privilege, or facility under the control of the carrier or conference of carriers which is granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, or charges, and shall include specimens of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement. Copies of such tariffs shall be made available to any person and a reasonable charge may be made therefor. The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count.

"(2) No change shall be made in rates, charges, classifications, rules or regulations, which results in an increase in cost to the shipper, nor shall any new or initial rate of any common carrier by water in foreign commerce or conference of such carriers be instituted, except by the publication, and filing, as aforesaid, of a new tariff or tariffs which shall become effective

not earlier than thirty days after the date of publication and filing thereof with the Commission, and each such tariff or tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the time when the rates, charges, classifications, rules or regulations as changed are to become effective: Provided, however, That the Commission may, in its discretion and for good cause, allow such changes and such new or initial rates to become effective upon less than the period of thirty days herein specified. Any change in the rates, charges, or classifications, rules or regulations which results in a decreased cost to the shipper may become effective upon the publication and filing with the Commission. The term "tariff" as used in this paragraph shall include any amendment, supplement or reissue.

"(3) No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and duly published and in effect at the time; nor shall any such carrier rebate, refund, or remit in any manner or by any device any portion of the rates or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs.

"(4) The Commission shall by regulations prescribe the form and manner in which the tariffs required by this section shall be published and filed; and the Commission is authorized to reject any tariff filed with it which is not in conformity with this section and with such regulations. Upon rejection by the Commission, a tariff shall be void and its use unlawful.

"(5) The Commission shall disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

"(6) Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action."

SEC. 5. Section 20, Shipping Act, 1916, is amended by changing the period at the end thereof to a semicolon and adding the following: "or to prevent any common carrier by water which is a party to a conference agreement approved pursuant to section 15 of this Act, or any other person subject to this Act, or any receiver, trustee, lessee, agent, or employee of such carrier or person, or any other person authorized by such carrier to receive information, from giving information to the conference or any person, firm, corporation, or agency designated by the conference, or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with the conference or its member lines or of determining whether a member of the conference has breached the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act shall be unlawful."

SEC. 6. Section 16 First, Shipping Act, 1916 (39 Stat. 734; 46 U.S.C. 815), is hereby amended by deleting the period at the end thereof and adding the following: "": Provided, That within thirty days after enactment of this Act, or within thirty days after the effective date or the filing with the Commission, whichever is later, of any conference freight rate,

rule, or regulation in the foreign commerce of the United States, the Governor of any State, Commonwealth, or possession of the United States may file a protest with the Commission upon the ground that the rate, rule, or regulation unjustly discriminates against that State, Commonwealth, or possession of the United States, in which case the Commission shall issue an order to the conference to show cause why the rate, rule, or regulation should not be set aside. Within one hundred and eighty days from the date of the issuance of such order, the Commission shall determine whether or not such rate, rule, or regulation is unjustly discriminatory and issue a final order either dismissing the protest, or setting aside the rate, rule, or regulation."

SEC. 7. The Shipping Act, 1916, is hereby amended by inserting a new section 43 reading as follows:

"SEC. 43. The Commission shall make such rules and regulations as may be necessary to carry out the provisions of this Act."

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

HERBERT C. BONNER,

EDWARD A. GARMATZ,

THOMAS N. DOWNING,

BOB CASEY,

THOR C. TOLLEFSON,

JOHN H. RAY,

W. S. MAILLIARD,

Managers on the Part of the House..

WARREN G. MAGNUSON,

CLAIR ENGLE,

GALE W. MCGEE,

JOHN MARSHALL BUTLER,

HUGH SCOTT,

Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H.R. 6775 to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Basically, the difference between H.R. 6775 as it passed the House and passed the Senate is in the manner of approach in four major respects.

(1) The House bill declared exclusive patronage shipping contracts between carriers and shippers to be prohibited except upon prior approval by the appropriate Federal Government agency (now Federal Maritime Commission) and required that the use of such contracts by steamship conferences or individual steamship companies could be approved only if they met certain specified criteria and standards. The bill as it passed the Senate eliminated the prohibition language and affirmatively permitted the use of dual rate, or exclusive patronage, contracts.

(2) The bill as it passed the House made it mandatory that all criteria be affirmatively met before the use of exclusive patronage contracts would be permitted and conference agreements approved by the Commission. The Senate version would permit the use of exclusive patronage contracts unless the Commission made findings to the contrary.

(3) The bill as it passed the House contained several major provisions intended to protect the status of independent carriers who might choose not to join a conference but which would, at the same time, give the conferences full and fair opportunity to operate with effective dual rate systems. The bill as it passed the Senate, for the most part, eliminated all such provisions of an antitrust nature.

(4) The bill as it passed the House provided that conferences of carriers or individual carriers operating in the foreign commerce of the United States must designate persons upon whom service of process may be made within the United States and provide records or other information, wherever located, required by any order of the Commission. These features were stricken from the bill in the Senate version.

As agreed upon, by the conferees, the bill in major respects conforms with the Senate approach on the foregoing points.

Discussion of the differences in more detail follows.

The House bill required findings by the Commission that a proposed dual rate conference agreement would not be detrimental to the commerce of the United States or contrary to the public interest and is not intended, and will not be reasonably likely, to cause the exclusion

of any other carriers from the trade. The Senate version omitted the last provision and, with respect to the others, provided that a dual rate agreement should be approved unless the Commission found it to be detrimental to the commerce of the United States or contrary to the public interest. The conferees' agreement adopts the Senate amendments.

The bill as passed the House required that the shippers' contract under a proposed conference agreement must contain a provision assuring space on vessels to contract signers. The Senate omitted this provision and substituted a provision that a contract signer be released from his contract with respect to a particular shipment if conference carriers could not provide space for his shipment. The House conferees agreed to this change.

The House bill provided that the shipper's contract with the conference should cover only those goods to which he has the legal right to select the carrier at the time of shipment. The Senate version added a proviso that if the shipper divested himself of that right before shipment with intent to avoid his contract, such conduct constituted a breach of contract. The conference agreement adopted the Senate amendment with a minor amendment.

The Senate added a provision that a conference contract must exclude cargo carried in bulk without mark or count other than liquid cargo and the conference agreement adopts the amendment.

The bill as it passed the House required the Commission to withdraw its permission for the use of a dual rate system where it finds, after notice and hearing, that the use of such contract tends to cause the elimination from, or prevent the entry into a trade of any carrier. The Senate struck out this provision. The conferees agreed to the Senate version.

The House bill stated that no conference contract could be approved by the Commission which authorized agreements between carriers or conferences of carriers serving different trades that would otherwise be naturally competitive unless in the case of agreements between carriers, each carrier, or in the case of conferences, each conference retains the right of independent action. The Senate struck out this provision. The Senate receded from its position with an amendment, accepted by the House conferees, limiting the prohibition on carrier agreements to carriers not members of the same conference.

The House bill contained a provision prohibiting shippers who act as carrier agents from representing such carrier in conference activities unless no other qualified person was available. The Senate struck the provision and the House receded from its position.

The Senate omitted a provision from the House bill prohibiting agreements whose probable effect will be reasonably likely to exclude any other carrier from the trade. The House receded from its position.

The House bill contained a requirement that no conference agreement shall be approved unless it designated a person within the United States upon whom service of process could be made, effective against all members of the conference and contained an agreement to provide documents and records required by the Commission, together with another similar provision as to all common carriers by water in the foreign trade. The Senate struck out both provisions. The conference agreement adopts the Senate position.

The House bill required conference agreements to contain provisions for policing of the obligations under them and for reasonable procedures for consideration of shippers' complaints. The Senate struck out the provision and inserted in lieu thereof authority in the Commission to disapprove an agreement after notice and hearing on a finding of inadequate policing and failure to maintain procedures for hearing shippers' complaints. The conference agreement adopted the Senate amendment.

The House validated existing agreements which are lawful immediately prior to the enactment of this act for a further period of 1 year after enactment, unless sooner disapproved, canceled, or modified by the Commission. The Senate added a proviso that existing agreements rendered unlawful by the act must be amended to comply with the act and if such amendments are filed for approval within 6 months after enactment, such agreements shall be lawful unless and until disapproved, canceled, or modified by the Commission but agreements not so amended within the period if thereafter found in violation of the act may be declared unlawful from the expiration of the 6-month period. The conferees adopted an amendment providing that amended agreements filed within the 6-month period are lawful for a further period of 1 year during which year the Commission shall approve, disapprove, cancel, or modify in accordance with this act.

The House rendered unlawful reductions in rates or charges by a common carrier or conference of carriers for the purpose of destroying competition and provided a penalty therefor and authorized reductions made in good faith to meet competition. The Senate struck out the provision and the House receded from its position.

The House authorized the solicitation and receipt of information by a conference to determine whether a shipper or consignee or conference member has committed a breach of his agreement with the conference. The Senate version omitted the provision but receded from its position with an amendment to make the section applicable to a larger class of persons.

The House authorized the Commission to make rules and regulations necessary under specified sections of the act; the Senate amended by broadening the authority to include the entire act. The House receded from its position.

The Senate amended the bill to include a new section authorizing the Governor of a State, Commonwealth, or possession of the United States and any port authority or municipality operating a port to file a protest concerning any conference rate or regulation within 30 days of its filing with the Commission on the ground of unjust discrimination. Within 120 days, the Commission would be required to determine whether the rate or regulation is discriminatory and, if so, may set it aside. The conference agreement adopted the Senate amendment with an amendment eliminating the reference to port authorities and municipalities and increasing the time of Commission action to 180 days.

In addition to the foregoing, there were a number of minor, technical, or conforming amendments agreed to by the conferees.

The Senate amended the title of the bill and the conference agreement adopts the Senate amendment.

HERBERT C. BONNER,
EDWARD A. GARMATZ,
THOMAS N. DOWNING,
BOB CASEY,
THOR C. TOLLEFSON,
JOHN H. RAY,
W. S. MAILLIARD,
Managers on the Part of the House.

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9. WATERSHEDS. Received from the Budget Bureau plans for works of improvement on the following watersheds: Excondido Creek, Calif., Upper Quaboag River, Mass., Gering Valley, Nebr., Gum Neck, N. C., Wagon Creek, Okla., Pine Creek, Tenn., and Northeast Tributaries of the Leon River, Tex.; to Agriculture and Forestry Committee; and Box Elder Creek, Mont.; to Public Works Committee. p. 19344
10. PUBLIC LANDS. Both Houses received from the Interior Department a proposed bill "to revise the boundary of the Dinosaur National Monument, and for other purposes"; to Interior and Insular Affairs Committees. pp. 19340
11. PERSONNEL. Sen. Johnston inserted a summary of the activities of the Post Office and Civil Service Committee during this session of Congress. pp. 19357-8
12. FOREIGN AFFAIRS. Sen. Fulbright inserted a list of measures approved by the Foreign Relations Committee during this session of Congress. p. 19416
13. LEGISLATIVE PROGRAM. Sen. Mansfield stated that three appropriation bills remain be considered before adjournment sine die. He also stated that the bill relating to distributions of stock pursuant to orders enforcing the antitrust laws will be taken up on Fri. but if "prolonged controversy" develops on the bill further consideration of it will be postponed until next session. p. 19394

HOUSE

14. PERSONNEL. Agreed to the Senate amendments to H. R. 8765, to amend and clarify the reemployment provisions of the Universal Military Training and Service Act. This bill will now be sent to the President. p. 19305
15. STEAMSHIP CONFERENCES. Agreed to the conference report on H. R. 6775, to provide for the operation of steamship conferences. pp. 19302-5
16. BOTANIC GARDEN. By a vote of 215 to 125, rejected a motion to suspend the rules and pass H. R. 5628, to provide for a study and investigation of the desirability and feasibility of establishing and maintaining a National Tropical Botanic Garden in Hawaii. A two-thirds majority is necessary to pass a bill under suspension of the rules. pp. 19298-9
17. IMPORTS. The Ways and Means Committee voted to report (but did not actually report) H. R. 6682, to provide for the exemption of fowling nets from import duty. p. D889
18. FEED GRAINS. Rep. Findley criticized the 1961 feed grains program, and discussed his bill "to prohibit payment under the 1962 feed grain program for the retirement of phantom acres." pp. 19319-20
19. TEXTILES. Rep. Wickersham discussed the increasing use by manufacturers of low grade cotton. pp. 19322-3
20. CIVIL DEFENSE. The Government Operations Committee submitted the ninth report on the civil defense program (H. Rept. 1249). p. 19340

ITEMS IN APPENDIX

21. BUDGET. Extension of remarks of Sen. Byrd, Virginia, inserting an article discussing Federal budgetary policy, "The Theory That Won't Work." p. A7537

Extension of remarks of Rep. Alger saying, "There is only one way to have sound fiscal responsibility and that is for the Government to live within its income," and inserting an article, "So What?" pp. A7579-80

22. NATURAL RESOURCES. Extension of remarks of Rep. Aspinall inserting an address by the Secretary of the Interior at the national convention of the National Rivers and Harbors Congress. pp. A7550-2
23. FARM PROGRAM. Extension of remarks of Rep. Bruce criticizing the farm program and inserting two articles, "Program Penalizes Hoosiers," and "The Real Danger." p. A7554
- Extension of remarks of Rep. McIntire inserting an article, "City Congressmen, Too, Raise the Question of New Farm Programs." pp. A7556-7
24. RICE. Extension of remarks of Rep. Gathings inserting an article, "Rice Acreage Increase Needed." p. A7555
25. CIVIL DEFENSE. Extension of remarks of Rep. Hoffman, Michigan, inserting "New Civil Defense Program--Additional Views." p. A7559

SENATE (continued)

26. APPROPRIATIONS. Received from the President supplemental appropriation estimates for various agencies (S. Doc. 54)(pp. 19343-4). This supplemental includes an item of \$5 million for this Department for emergency conservation measures. These funds are for cost-sharing assistance to farmers and ranchers for carrying out emergency conservation measures to protect drought and flood damaged lands from irreparable damage. The Senate Appropriations Committee held hearings on this item.

BILLS INTRODUCED

27. PERSONNEL. S. 2589, by Sen. Johnston (by request), to provide for the payment of compensation and restoration of employment benefits to certain Federal officers and employees improperly deprived thereof; to the Post Office and Civil Service Committee.
- S. 2591, by Sen. Johnston (by request), to amend section 7 of the Administrative Expenses Act of 1946, as amended, relating to travel expenses of civilian officers and employees assigned to duty posts outside the continental United States; to the Post Office and Civil Service Committee.
- S. 2592, by Sen. Johnston (by request), to amend section 7 of the Administrative Expenses Act of 1946, as amended; to the Post Office and Civil Service Committee.
- H. R. 9362, by Rep. Ryan, to provide coverage under the old-age, survivors, and disability insurance system for all officers and employees of the United States and its instrumentalities; to the Ways and Means Committee.
28. AIR POLLUTION. H. R. 9347, by Rep. Halpern, to amend the Federal air pollution control law to provide for a more effective program of air pollution control; to the Interstate and Foreign Commerce Committee.
- H. R. 9352, by Rep. Corman, to provide for public hearings on air pollution problems of more than local significance under, and extend the duration of, the Federal air pollution control law; to the Interstate and Foreign Commerce Committee.

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COMMITTEE HEARINGS ANNOUNCEMENTS:

Sept. 22: Supplemental appropriations, S. Appropriations (exec).
Supergrades bill, conferees (exec).

interposed such an objection if it had not otherwise been done. This is not a deliberate effort to inconvenience the Members or to engage in dilatory tactics. It arises from my own very profound concern that this House search its conscience and review its own judgment with respect to this so-called arms control legislation and particularly with respect to the timing of this legislation.

There is an admonition, and I think it is scriptural in its source, as to the importance of making sure that we do not give occasion for our good to be evil spoken of. Certainly to work for peace is good. But to take those steps with whatever high motives we may have in a particular situation and climate which may cause the good to be evil spoken of is another matter.

I am concerned because of the transfer of authority in this bill to the Executive. I am concerned because of the lack of what seems to me adequate guarantees that any negotiations or agreements entered into will be subject to the constitutional process of ratification. I am concerned—and my mail and communications indicate the concern of hundreds of thousands of Americans—over the possibility that in the interim between a sine die adjournment of the Congress and our convening next January there will be dangerous Executive commitments pursuant to this legislation or in this field of disarmament which will confront us with a fait accompli next January. That is why I have had many communications urging that there are not be an adjournment of the Congress. I do respectfully remind my colleagues that this administration which so far has not been in office for a moment when Congress was not currently in session did, despite the fact that Congress was then in session, make unauthorized commitments last March which have now been honored almost perforce by this Congress with respect to the Peace Corps, and similarly commitments to the tune of \$20 billion were made by the Executive even while Congress was in session with respect to aid in South America.

I ask merely that this House consider again what factor of urgency makes it so imperative that we act now in the closing hours of this session on this sweeping legislation when it is a matter of only 3 months until Congress will be back, when we will know something more of the world situation and will certainly know more of the situation in the United Nations.

Mr. BROWN. Mr. Speaker, I yield myself such time as I may desire.

(Mr. BROWN asked and was given permission to revise and extend his remarks.)

Mr. BROWN. Mr. Speaker, as the gentleman from Virginia, the chairman of the Rules Committee, Mr. SMITH of Virginia, has so ably explained, this resolution would simply provide for sending to conference the bill H.R. 9118, the so-called arms control bill.

I have listened intently to the gentleman from Michigan, and I wish to say very frankly that when this legislation came before the House in its original

form I had considerable concern as to some of its provisions, and felt that some of them were not proper. Therefore, along with several other Members of the House, I joined in offering amendments which we believed would make the bill better. Many of those amendments were accepted by the Committee on Foreign Affairs, in which this bill originated.

The measure as it left the House had a great many protective provisions in it, and I hope they are maintained in the conference between the House and the other body. I believe that as a result of the amendments to this bill that were adopted on the floor of the House there were only 52 or 54 votes cast against it on passage. A great many Members of this body, I am sure, voted in favor of the bill, as I did, because we believed it had been strengthened by the many protective amendments which had been accepted or adopted. Since that time I have talked to a number of Members of the House who will be on the conference committee, and who will have something to say about the final form of this legislation, and I am very strongly of the belief, and certainly wish to express the great hope, that the Members of the House who serve on the conference committee will make every effort, and hold out, as long as may be necessary, to protect the position of the House by keeping in the bill the strengthening and corrective amendments written into it by the House, many of which, as I said before, were gratefully accepted by the Committee on Foreign Affairs, in which the bill originated.

It is with that belief that I supported this resolution in the Rules Committee, and support its adoption at this time.

Mr. HALEY. Mr. Speaker, will the gentleman yield?

Mr. BROWN. I yield to the gentleman from Florida.

Mr. HALEY. I can thoroughly agree with what the gentleman has said, but I think there still are a good many Members of this House that think the timing of this bill is very bad. I hope that when the conference is called the amendments which I think did strengthen the bill will be retained by the conferees on the part of the House. I voted against the bill, and I voted against it simply because I believe this bill is very badly timed.

Mr. BROWN. I certainly hope these amendments will be retained because I feel rather certain, from the discussions which have been held concerning this matter on the floor of the House, and in the lobbies and in the cloakrooms, that unless these amendments are retained in the bill many Members will vote against the conference report on final adoption.

Mr. FOUNTAIN. Mr. Speaker, will the gentleman yield?

Mr. BROWN. I yield to the gentleman from North Carolina.

Mr. FOUNTAIN. I want to urge the conferees to insist particularly on the amendment to section 33 of the bill which relates to policy formulation. It states that there will be no reduction or limitation of arms except in keeping with the treatymaking power of the

President under the Constitution, or unless there is other affirmative legislative action on the part of the Congress. I think that is a very important section of this bill. So far as I am concerned, if it is deleted, I do not expect to vote for the bill.

Mr. BROWN. I wish, if I may, to congratulate the gentleman from North Carolina [Mr. FOUNTAIN] for his amendments. I think they were the most important amendments adopted to this bill, and should by all means be retained in it. I am sure almost every Member of this House wishes to see them retained in the measure, and I hope they will be. I congratulate the gentleman from North Carolina on offering his amendments.

Mr. FOUNTAIN. I thank my colleague.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. BROWN. I yield to the gentleman from Iowa.

(Mr. GROSS asked and was given permission to extend his remarks.)

[Mr. GROSS addressed the House. His remarks will appear hereafter in the Appendix.]

Mr. BROWN. Mr. Speaker, I have no further requests for time and yield back the balance of my time.

Mr. SMITH of Virginia. Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the adoption of the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. The Chair appoints the following conferees: Messrs. MORGAN, ZABLOCKI, HAYS, Mrs. BOLTON, and Mr. JUDD.

REDESIGNATING THE JEFFERSON DIVISION OF EASTERN DISTRICT OF TEXAS AS MARSHALL DIVISION

Mr. CELLER. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (S. 2102) to redesignate the Jefferson division of the Eastern District of Texas as the Marshall division.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. McCULLOCH. Mr. Speaker, reserving the right to object, would the chairman of the Committee on the Judiciary please advise the House about the proposed change of name authorized by the bill?

Mr. CELLER. All this bill does is to redesignate the name of a division in the Eastern District of Texas to call the division the Marshall division instead of the Jefferson division and to remove the site of the holding of court from the town of Jefferson to the town of Marshall. The bill has the approval of the judicial council and of the administrator of the courts. I have already conferred with the distinguished minority

leader of the House and the majority leader of the House and the ranking Republican member of the Committee on the Judiciary, and they have all agreed to the adoption of this resolution.

Mr. McCULLOCH. Can the gentleman from New York please advise the House whether this proposal will result in additional cost in the holding of court in that area?

Mr. CELLER. It will not.

Mr. McCULLOCH. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 124(c) (5) of title 28, United States Code, is amended to read as follows:

"(5) The Marshall Division comprises the counties of Camp, Cass, Harrison, Hopkins, Marion, Morris, and Upshur.

"Court for the Marshall Division shall be held at Marshall."

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PRINTING OF ADDITIONAL COPIES OF HOUSE REPORT ON "NEW CIVIL DEFENSE PROGRAM"

Mr. HAYS. Mr. Speaker, by direction of the Committee on House Administration, I ask unanimous consent for the immediate consideration of the resolution (H. Res. 473) which I have sent to the desk.

The Clerk read the resolution as follows:

Resolved, That there be printed for the use of the Committee on Government Operations thirty thousand additional copies of House Report No. 1249, current session, entitled "New Civil Defense Program."

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. MEADER. Mr. Speaker, reserving the right to object, does the gentleman know that minority views have been filed on this and does the printing include the minority views?

Mr. HAYS. The gentleman is aware of that and the gentleman understands from the committee that the minority views will be included.

Mr. MEADER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

STEAMSHIP CONFERENCES

Mr. BONNER. Mr. Speaker, I call up the conference report on the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

The Clerk read the title of the bill.

Mr. BONNER. Mr. Speaker, I ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 20, 1961.)

Mr. BONNER. Mr. Speaker, I am certain the gentleman from Washington [Mr. TOLLEFSON] and the gentleman from New York [Mr. CELLER] desire to make statements on this conference report.

The SPEAKER pro tempore. The gentleman from North Carolina is recognized for 1 hour.

Mr. BONNER. I yield 30 minutes to the gentleman from Washington [Mr. TOLLEFSON].

Mr. Speaker, I certainly do not desire to detain the House from the business I know it is anxious to proceed with, but this is a matter I do think should be explained to the House and should be well understood.

In 1916 the American merchant marine and foreign-flag shipping engaged in the commerce of the United States were exempt from the antitrust laws, when the Congress enacted the Shipping Act of 1916. This opened an opportunity to correct a chaotic condition theretofore existing in ocean transportation, and to aid the commerce of the United States and the economy of this Nation.

International shipping toward the end of the 19th century was constantly beset by rate wars, ruinous to carriers and shippers alike. No system of governmental regulation was in effect or deemed feasible or desirable. Self-regulation seemed the only means to assure some degree of stability in the ocean trades.

Therefore, conferences and various forms of tying devices including dual-rate systems were organized.

A decision of the Supreme Court in 1958 affecting the dual-rate system proposed for use in one conference jeopardized all the conferences engaged in the foreign commerce of the United States, and their member steamship lines including foreign-flag shipping as well as our American merchant marine.

This decision created a condition that could have been very detrimental to the interests of this country.

Immediately after that court decision this House passed a resolution continuing the then present system and has renewed that resolution twice, pending opportunity for further review of the situation. During the past 3 years two committees of the House and one of the Senate have studied the subject most thoroughly.

As this bill came from the Committee on Merchant Marine and Fisheries it contained two provisions that were controversial. One applied to the antitrust laws and the second provision applied to the matter of securing the records of foreign-ship operators, foreign lines. The State Department violently objected to

the second, and the Department of Justice was insistent on the first. With the inclusion of these two provisions in the bill it jeopardized the continuation of conferences in dual rates.

Mr. PASSMAN. Mr. Speaker, will the gentleman yield for about 15 seconds?

I wish to speak out of order very briefly, for several Members have asked me when we would bring in the conference report on the foreign aid appropriation bill, so that the House could adjourn sine die. Let me state that it is not necessarily the foreign aid appropriation bill that would hold up adjournment. There are several other important measures, both appropriations and otherwise, which must be acted upon. These include the public works appropriations bill, which has just been reported by the Senate committee; the final supplemental appropriations bill, which is yet to be reported by the Senate committee, as well as several other legislative matters which are yet to be acted upon. We began the conference on the foreign aid appropriations bill this morning, and we will resume it later today. Insofar as I am concerned, and on this I believe I speak in behalf of the other conferees for the House, we intend to work diligently and tirelessly for a reasonable adjustment of the House-Senate differences. I would add, however, as I believe the Members of this body already know, that we do not intend to capitulate to pressure or unreasonable demands. But let the Members understand that it is not the Foreign Operations Appropriations Subcommittee that is holding up sine die adjournment.

Mr. HALLECK. Mr. Speaker, I would like to say to the gentleman from Louisiana that, of course, he has one of the important measures we must act upon before we can adjourn. But I cannot see any reason why the measure to which he refers and the other measures cannot be worked out come Saturday night.

Mr. PASSMAN. We are working very hard to bring back a conference report before Saturday night.

Mr. BONNER. Mr. Speaker, this explanation is being made because the bill as it passed this House contained both the antitrust provision and the provision that foreign operators would have to submit the records of their operations wherever they might be located. The bill passed the House unanimously.

The Senate Commerce Committee after full hearings rejected these two features in reporting the bill to the Senate.

These two subjects were debated in the Senate. Amendments were offered in the Senate to restore the House provisions and they were not accepted. We went to conference and the conferees overwhelmingly decided not to reinstate the antitrust language and the authority to demand foreign records.

The conferees did accept the reinstatement of an important provision of the House bill that would authorize disapproval of any freight rates that might be so unreasonably high or so unreasonably low as to be detrimental to the commerce of the United States.

This provision will serve as a restraint on conferences that might exercise their power too far.

There are other provisions in the bill that strengthen the purposes of the 1916 law from what they were formerly.

I am primarily interested in the welfare of the future of the American merchant marine. I know, first of all, that we need the conferences and we need the dual rate system to make the conferences effective. Therefore, I hope the House will adopt the conference report, notwithstanding the deletion that I have mentioned which was passed in the House by unanimous consent.

Mr. Speaker, I now yield 5 minutes to the gentleman from New York [Mr. CELLER].

Mr. CELLER. Mr. Speaker, before commenting on the conference report on H.R. 6775, I wish to commend the distinguished chairman of the Committee on Merchant Marine and Fisheries for his efforts to secure enactment of a bill that would protect the interests of the general public and the interests of the U.S. maritime industry alike. Through the leadership of the gentleman from North Carolina, the House Committee on Merchant Marine and Fisheries reported to the House H.R. 6775 in a form that would have protected the export trade of the United States from unreasonable rates and discriminatory practices, would have protected small, independent maritime operators, would have protected American consumers from monopolistic price fixing on imported goods, and would have extended to the American public, in general, minimal antitrust protection against international cartels. The House passed that bill unanimously.

The committee of conference has now removed these minimal protections necessary to safeguard the public interest. Indeed, the committee of conference has even removed certain protections for the public that the other body added to the House bill. In short, the bill, H.R. 6775, as now recommended by the conference committee, is a very different and far inferior bill to that which this House passed unanimously.

The bill as it is now presented to the House gives virtual carte blanche to foreign steamship lines to extend their domination over the foreign commerce of the United States. This can only result in the perpetration of further abuses upon the American shipper and consumer.

For example, at our Antitrust Subcommittee shipping hearings held in 1959, 1960, and during the month of March this year, the subcommittee, on the basis of examining the records of only a small number of steamship lines, discovered more than 240 apparent violations of Federal statutory provisions—violations which have caused the Attorney General to embark on a sweeping grand jury investigation of steamship industry practices, and have caused the Federal Maritime Board to institute a number of investigative and rulemaking proceedings.

What concerns me most about the

pending bill, Mr. Speaker, is that it grants to the maritime industry, dominated by foreign carriers, a powerful predatory weapon normally outlawed by our antitrust laws and at the same time offers scant protection from monopolistic depreciations for the foreign commerce of the United States and for the American consuming public. As hearings by the House Antitrust Subcommittee and the House Committee on Merchant Marine and Fisheries have demonstrated, and as further established by studies of the Department of Commerce, our entire export program has been seriously impaired by monopolistic practices of steamship cartels.

A study has been prepared by the Department of Commerce showing how the American export trade has been damaged by these cartels. This report will be appended to my remarks.

Without the protections that the House bill contained and which the conference committee has now stricken, it is clear that American consumers will be paying more and more for imported goods and that American businesses will be exporting less and less as these foreign-dominated shipping cartels continue to price our goods out of foreign markets by means of their monopolistic rate rigging.

For these reasons, Mr. Speaker, I cannot in good conscience support this conference report and must view with great concern enactment of this bill in its present form.

Mr. BONNER. Mr. Speaker, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from North Carolina.

Mr. BONNER. Now, it is true that the Committee on the Judiciary did find certain malpractices, but with the recent adoption by the Congress of the President's Reorganization Plan No. 7, the reorganization of the Maritime Administration and the Maritime Board, there will be more enforcement than has heretofore existed, and I believe the Committee on the Judiciary and others interested in this subject will not find in the future the errors and mistakes that have been made in the past.

Mr. CELLER. I hope that that will be the case. The House bill that the gentleman from North Carolina [Mr. BONNER] introduced and guided through the House, had, beyond peradventure of a doubt safeguards to prevent the abuses we unearthed. Those safeguards should not have been taken out of the bill in conference. Those were antitrust provisions that would have prevented the predatory practices by steamship cartels that keep independent steamship lines out of the trade and drive independents out of trades they have entered. Such competition is the only protection against arbitrary and excessive rates established by the cartels. That is why antitrust safeguards are essential in the public interest and should not have been taken out.

For these reasons, Mr. Speaker, I must repeat that I cannot, in good conscience, support this conference report. I must view with great concern the enactment of this bill in its present form.

Mr. Speaker, I ask unanimous consent to revise and extend my remarks and to include a study prepared by the Department of Commerce showing how the American export trade has been damaged by these foreign steamship cartels.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The material referred to follows:

OCEAN FREIGHT RATES AS A DETERRENT TO THE EXPANSION OF U.S. EXPORT SALES

Since the early part of this year, the Department of Commerce has been holding weekly meetings with representatives of various industries to discuss ways and means of increasing export sales in connection with our current export sales expansion program.

During several of these meetings industry spokesmen have pointed out that one of the principal deterrents to increased export sales is the high level of outbound ocean freight rates as compared with the inbound rates for the same commodity on the same trade route. Complaints have also been registered regarding the discrepancy between rates from U.S. ports to foreign destinations and from foreign ports to these same foreign destinations for the same commodity. Specifically, the following industries have provided the Department with statements regarding this matter: automotive equipment, industrial chemicals, major appliances, jewelry industry, electronics, rubber and rubber products, farm machinery, textile machinery, fertilizers, air conditioners and refrigeration equipment.

Following is a synopsis of the statements presented by these industries:

AUTOMOTIVE EQUIPMENT

The eastbound automobile rate level particularly to the continental/United Kingdom ports has been higher than the inward or westbound rate to U.S. ports, since 1945. After extended discussion with the AMA Ocean Rate Committee, the conference lines made a rate deduction in 1958 and another in 1959.

The impression exists that these concessions were prompted, however, by the then impending congressional investigation. Concern exists that as soon as the conference lines decided to boost the eastbound rates once again, this will be done, regardless of protest.

United Kingdom trade

	Boxed	Unboxed
Present eastbound conference rate, ¹ per 40-cubic-foot ton.....	\$23.00	\$26.00
Reported westbound rate, ² per 40 cubic feet.....	11.55	\$ 16.45

¹ Rate applies to 8,960 pounds.
² Rate applies to 4,481 pounds.
³ 240 cubic feet or greater; \$12.60 per 40-cubic-foot units under 240 cubic feet.

Continental trade

	Present eastbound conference rate ¹		Reported westbound rate ² —From Antwerp (per cubic meter, 35 feet)
	French-Belgium-Dutch ports (per 40-cubic-foot ton)	German ports (per 40-cubic-foot ton)	
Boxed.....	\$15	\$16.50	\$ 22.00
Unboxed....	18	20.00	14.30

¹ Rate applies to 8,960 pounds.
² Rate applies to 3,000 kilos (6,615 pounds).
³ To a value of \$2,000; \$33 per cubic meter if value over \$2,000.

INDUSTRIAL CHEMICALS

There is such great disparity between east-bound and westbound transatlantic freight costs as to make it impossible, in many cases, to effect eastward sales at all. A typical chemical commodity, which is sufficiently universal in application to make it worth using as an example, is sodium cyanide. To the best of our knowledge, this material comes to the United States from Germany, France, and the United Kingdom to the extent of some 18 million pounds, valued at about \$3 million per year. Movement eastward is, to all intents and purposes, nil, despite the fact the published going prices in the home market in all producing countries are roughly the same.

This one-way movement is explained more by the discrepancy in freights than by tariff differentials:

<i>Per hundredweight</i>	
Hamburg to New York.....	\$0.82
Rotterdam to New York.....	.82
Liverpool to New York.....	.873
New York to Hamburg.....	6.61
New York to Rotterdam/Antwerp....	5.85
New York to Liverpool.....	(¹)
New Orleans to Antwerp.....	6.44

¹ Not yet available.

MAJOR APPLIANCES

At the August 17, 1960, meeting of the ocean rate committee, consumer products division, various members reported that they had been informed of your interest in the level of ocean rates of freight insofar as they affect unfavorably the exports of American products to world markets.

This committee holds that the disparity between American and European—and in some instances Asian—ocean rates of freight is one of various important factors which have an adverse influence on the flow of a considerable number of American products to foreign markets. Electrical household appliances such as refrigerators, freezers, ranges, washing machines, dryers, and others are in this category.

The objectives of this ocean rate committee include continued negotiations with steamship conferences concerning rate levels which are detrimental to U.S. exports and, incidentally, harmful to the lines themselves, in the firm conviction that thereby a contribution will be made toward a rising volume of exports.

JEWELRY

Recently we made two simultaneous shipments of our men's jewelry to England via a member line of the North Atlantic and United Kingdom Freight Conference. They consisted of a total of 21 cartons: cube, 35 feet; weight, 1,128 pounds; value, \$7,273.81. We declared the merchandise as "articles of men's wear," as we do in the case of all other ocean freight shipments, and all air express and parcel post shipments.

The company ignored our declared classification and without consideration of any nature slapped the "imitation jewelry" rate of \$18.50 per carton minimum, or a total freight bill of \$388.50 on the shipment (parcel post would have been only \$275). Had we known this was going to take place, we would have increased the size of the cartons. But even had we done this, we would still have come under the "imitation jewelry" cubic-foot rate of \$3.25 per foot and our total freight bill would have been \$43.75 for this small shipment. To soak us \$388.50, where the rate charged by any other steamship line save those of the North Atlantic conferences would be \$43.75, is unjust, discriminatory, and outrageous. Obviously, what should be the most economical transportation, ocean freight, is anything but that under existing conference rates.

ELECTRONICS

Thank you for your recent telephone call, advising that your office plans to call to the

attention of the Federal Maritime Board, complaints of American industry that ocean freight rates discriminate against U.S. export shippers and favor our foreign competition.

The Electronic Industries Association, through its international department traffic committee, has worked for several years to alleviate this situation through direct negotiations with steamship conference representatives. In general, we have found the conference willing to cooperate and a number of rate adjustments have been put into effect covering products of the electronics industry.

The freight rate is, of course, a factor in establishing the price at which a product is sold in a foreign country. Many countries also base their tariff rates on the cost, insurance, and freight value of the product. This tends to multiply the already existing freight rate discrimination.

It is our recommendation that your office urge the Federal Maritime Board to investigate thoroughly all rate proposals presented to it and require that conferences justify all rates which discriminate against American shippers. American steamship companies are highly subsidized to insure that American export products can reach foreign ports at a shipping cost comparable with our foreign competition. Steamship conferences, which traditionally are dominated by foreign lines, should be required to justify all rate proposals which do not provide parity for American exports. The Federal Maritime Board should be encouraged to think in terms of rate parity for American exporters so they can enjoy the benefits which should be provided with the tax dollars spent to subsidize American shipping interests.

RUBBER

In many cases ocean freight rates are the deciding factor as to whether U.S. producers can obtain the business. An industry representative stated that both United States and West German producers quoted prices on a substantial order for surgeons' gloves in Ecuador. U.S. prices were lower, but ocean freight rates were so much higher that the landed cost from Germany was less than that for U.S. products, so that the business was placed with a German company.

FARM MACHINERY

Ocean freight rates handicap American exports. Some rates from the United States to Europe are considerably higher than rates from Europe to the United States. Some rates from Europe to a third country are lower than rates for the same distances on voyages originating in the United States.

TEXTILE MACHINERY

Marine freight rates are higher from U.S. ports to Europe than rates from Europe to the United States.

FERTILIZERS

Last week I was asked by one of our executives what single thing was the greatest deterrent to increasing our chemical export sales. I imagine that by asking this loaded question he expected I might say a bigger budget, more people, etc. My prompt answer to this question was noncompetitive U.S. ocean freight rates.

Reflecting on this subject, I knew that it was not specifically listed in the agenda and probably the committee does not desire to dwell on it at length at this time, but I do feel that this roadblock to expansion is so basic that if it is not recognized, then all of the help and assistance that the Government desires to give to aid exports may become academic, for I know in our case we must produce competitively and then deliver abroad competitively; and if we cannot complete both of these two stages, there is no use windmilling about anything else.

Please be mindful that I am expressing my personal opinion on a key deterrent to export sales of chemicals which Food Machinery & Chemical Corp. has to offer for

export, and if the chemical industry were canvassed, I believe you will find that for tonnage chemicals a considerable amount of business is lost because U.S. rates cannot compete with foreign-flag lines, many of which are subsidized by their governments to the extent it reflects substantially in their rate structure.

I would be the first to admit that I do not know how U.S. lines can lower their rates when I hear that the master of foreign vessels gets from \$4,000 to \$5,000 per year, and on U.S. vessels captains are paid \$10,000 to \$15,000, along with comparable differences in the pay of foreign versus U.S. crews. I have also heard that costs to load a vessel vary from \$1.50 to \$4 per ton abroad, whereas in the United States it is estimated at \$7 to \$8 per ton.

My point being, that if Food Machinery & Chemical Corp. can produce a product competitively for export but cannot deliver competitively, then the tariff rates, trade restrictions, or any help the Bureau can lend to promotion of trade, becomes academic.

From my point of view, in the strengthening of the U.S. position in world trade, ocean freight rates play a most vital integral part, and for Food Machinery & Chemical Corp. chemicals to take advantage of the assistance to its fullest degree we must first, somehow, equalize the primary problem of noncompetitive freight rates either by lowering our rates or increasing foreign rates. (Food Machinery & Chemical Corp.)

Potash fertilizer is a bulk commodity valued at only about \$20 (muriate of potash) or \$30 (sulphate of potash) per ton at U.S. mine. Because of its Carlsbad location, the major part of the domestic industry is burdened with a costly rail haul just to reach a port. Before the foreign destination is reached, a costly ocean freight must be added to arrive at the landed cost. This freight burden is onerous not only in its relation to the basic value of the potash fertilizer shipped but even more so in its relation to the much lower freight costs from the foreign producing countries to most of their export markets. Whereas ocean freight costs on potash to the Far East or Oceania are approximately the same from the United States as they are from Western Europe, it is a well-known fact that it costs twice as much to ship potash across the ocean from the United States to Europe as it costs to ship the same product and quality in the opposite direction. For this reason European potash producers have long been able to secure a substantial part of our domestic market in the coastal strip from Maine to Florida. The opening of the St. Lawrence Seaway may for the first time give European potash suppliers access to the important Midwest market. In general, a rail haul may add \$10 to \$15 per ton and an ocean freight another \$10 to \$15 per ton on U.S. potash exports. The significance of a freight advantage to a European supplier of, say \$5 per ton is obviously very important for a product which sells for \$20 per ton free on board plant. (Southwest Potash Corp.)

AIR CONDITIONING AND REFRIGERATION

A general statement was made by several industry representatives that ocean freight rates on shipments from the United States to foreign destinations are not competitive with similar rates for shipments to these same destinations from foreign points of origin.

In reply to these complaints the Department is pointing out first of all that the Government does not exercise any direct control over the level of ocean freight rates. Secondly, shippers are being advised to follow the procedure outlined in the attached pamphlet, "Ocean Freight Rates," whenever it is felt that certain rates are either excessively high or of a discriminatory nature.

Copies of all the industry statements listed in this memorandum have been transmitted to the Regulation Office of the Federal Maritime Board for whatever action is deemed appropriate.

Mr. TOLLEFSON. Mr. Speaker, I ask unanimous consent that all Members may extend their remarks at this point in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. TOLLEFSON. Mr. Speaker, the House and Senate conferees on H.R. 6775 have worked out a good bill and the House should approve it. Contrary to the fears expressed by the gentleman from New York [Mr. CELLER], concerning the bill, it contains adequate protection for both shippers and carriers as well as the public interest. While the antitrust language which the gentleman preferred was removed from the House version, other provisions of the bill give equally effective protection. The conferees were convinced that if the language which the gentleman from New York preferred were to be enacted into law the conference system would be destroyed and the American ship operators would eventually be put out of business. Rate wars would follow. Despite our ship subsidy program, the American operator could not successfully compete with his foreign counterpart because the subsidies do not take care of all the cost differences which exist between the American and the foreign operators. The foreigner has lower operating costs and could cut his rates below that which the American must charge to stay in business.

The gentleman from New York wanted to see in this legislation a provision to require the production of the foreign operator's documents located abroad. Such a provision would be clearly beyond the jurisdiction of the United States. It would be an affront to the sovereignty of foreign nations, 12 of which have registered strong protests against such a proposal with our Department of State. Several of such nations have stated that they would not permit their nationals to produce such documents. If we enacted that kind of a law, the foreign operators would simply pull out of the conferences and the conferences would fail. History has proven that without conferences rate wars ensue, all to the detriment of the American operator and, for that matter, to the detriment of the shipping public.

The conference system and the dual-rate contracts are necessary if we are to have stability of rates and regularity of shipping service. Every congressional investigation of shipping problems over the years has convinced the Members of Congress that this is so.

May I say to the House that the great majority of the shippers of our country who appeared before our committee during the last 3 years favor this legislation. A few shippers have had complaints about the operation of shipping conferences. That is understandable. No system is perfect. Human factors are always involved and errors of judgment

are bound to occur. They would occur even if we accepted the language urged by the gentleman from New York. If a majority of the shippers approve this legislation, then the Congress should too. Our committee has worked hard for 3 years to come up with a good bill. We sincerely believe that we have done so. I, therefore, urge the House to accept the conference report. The President should then sign the bill. If he does not, he will have to take the responsibility for the destruction of the conference system, for the chaos which will follow, and, finally, for the injury which will be done to the American merchant marine.

(Mr. TOLLEFSON asked and was given permission to revise and extend his remarks.)

The SPEAKER pro tempore. The question is on the conference report.

The conference report was agreed to.

A motion to reconsider was laid on the table.

RELATING TO ELECTIONS IN THE DISTRICT OF COLUMBIA

Mr. McMILLAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 8444) to amend the act of August 12, 1956, relating to elections in the District of Columbia, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina? The chair hears none, and appoints the following conferees: Messrs. JAMES C. DAVIS, DOWDY, WHITENER, BROYHILL, and HARSHA.

UNIVERSAL MILITARY TRAINING AND SERVICE ACT

Mr. KILDAY. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 8765) to amend and clarify the reemployment provisions of the Universal Military Training and Service Act, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, strike out all after line 7 over to and including line 9 on page 2 and insert: "(1) Any person who after entering the employment to which he claims restoration, enlists in the Armed Forces of the United States (other than in a reserve component) shall be entitled upon release from service under honorable conditions to all the reemployment rights and other benefits provided for by this section in the case of persons inducted under the provisions of this title, if the total of his service performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any service, additional or otherwise, performed by him after August 1, 1961, does not exceed four years (plus in each case any period of additional service imposed pursuant to law)."

Page 2, strike out all after line 21 over to and including "Involuntarily" in line 1 on

page 3 and insert "total of such active duty performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any such active duty, additional or otherwise, performed after August 1, 1961, does not exceed four years".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

AMENDMENT OF CAREER COMPENSATION ACT OF 1949

Mr. KILDAY. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 2732) to amend section 303 of the Career Compensation Act of 1949 to provide that the Secretaries of the uniformed services shall prescribe a reasonable monetary allowance for transportation of house trailers or mobile dwellings upon permanent change of station of members of the uniformed services, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert: "That the twelfth sentence of section 303(c) of the Career Compensation Act of 1949 (37 U.S.C. 253(c)) is amended to read as follows: 'Under regulations prescribed by the Secretaries concerned and in lieu of transportation of baggage and household effects or payment of a dislocation allowance, a member of the uniformed services, or in the case of his death his dependents, who would otherwise be entitled to transportation of baggage and household goods under this section, may transport a house trailer or mobile dwelling within the continental United States for use as a residence by one of the following means—

"(1) transport the trailer or dwelling and receive a monetary allowance in lieu of transportation at a rate to be prescribed by the Secretaries (but not to exceed twenty cents per mile);

"(2) deliver the trailer or dwelling to the Government for transportation by commercial means; or

"(3) transport the trailer or dwelling by commercial means and be reimbursed by the Government subject to such rates as may be prescribed by the Secretaries concerned;

"Provided, That the cost of transportation under clause (2) or the reimbursement under clause (3) may not exceed (A) the current average cost for the commercial transportation of a house trailer or mobile dwelling, (B) 36 cents per mile, or (C) the cost of transporting the baggage and household effects of the member or his dependents plus the dislocation allowance authorized in this section, whichever of (A), (B) or (C) is the lesser: And provided further, That any payment authorized by this section may be made in advance of the transportation concerned."

Amend the title so as to read: "An Act to amend section 303(c) of the Career Compensation Act of 1949 to authorize the Secretaries concerned to prescribe a reasonable monetary allowance for the transportation of house trailers or mobile dwellings."

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. GROSS. Mr. Speaker, reserving the right to object, may we have just a brief explanation of what this bill does?

Mr. KILDAY. Mr. Speaker, I shall attempt to explain the bill for the gentleman from Iowa.

Mr. Speaker, the House passed this bill to authorize an increase in the cost of transportation of house trailers and mobile homes. It was considered under a rule and thoroughly debated. The Senate amendment places a ceiling on the amount which can be paid.

Mr. GROSS. Mr. Speaker, I withdraw my reservation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

ESTABLISHMENT OF A REGISTER OF CERTAIN MOTOR VEHICLE OPERATORS' LICENSES

Mr. HARRIS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 1440) to amend the act approved July 14, 1960 (74 Stat. 526), relating to the establishment of a register in the Department of Commerce of certain motor vehicle operators' licenses.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

Mr. DEVINE. Mr. Speaker, reserving the right to object, and I do not intend to object, I would like to have a brief explanation of the bill for the benefit of the Members.

Mr. HARRIS. Mr. Speaker, this legislation amends existing law to facilitate administration of the national driver license register program.

This register, which contains the names of persons whose permits to drive motor vehicles have been revoked for driving while drunk or for conviction of a traffic violation involving loss of life, was set up July 1, 1961, in the Department of Commerce in accordance with Public Law 86-660 of the last Congress.

The pending bill was recommended by the Department of Commerce to clarify present law for the reason that some States do not revoke but suspend permits, while some both revoke and suspend. This legislation would permit the Department to list revocations as well as suspensions for the two offenses.

The Department informed the committee that enactment of this legislation would benefit 13 States.

The legislation was proposed as a result of a conference of representatives of State motor vehicle administrators, the American Association of Motor Vehicle Administrators, the American Bar Association, the Traffic Institute of Northwestern University, and the Bureau of Public Roads of the Department of Commerce.

Hearings were held by the Subcommittee on Health and Safety September 12 on this and three related bills. No one appeared in opposition.

Mr. ROBERTS. Mr. Speaker, will the gentleman yield?

Mr. DEVINE. I yield to the gentleman from Alabama.

Mr. ROBERTS. Mr. Speaker, last year Congress enacted and the President signed into law the Rhodes bill, sponsored by the gentleman from Arizona, which set up a national register of names of persons convicted of driving while intoxicated or for any violation of a highway safety code resulting in death.

The purpose is to help prevent the inadvertent granting of driver privileges to persons whose license have been forfeited in another State.

Mr. Speaker, the legislation has worked quite well. Forty-five States, the District of Columbia, the Canal Zone, Puerto Rico, and the Virgin Islands have agreed to cooperate and 43 of these jurisdictions are participating in this program. However, the original legislation covered only permits which have been revoked.

The bill we have here today will amend existing law to accommodate those States which suspend as well as revoke for these two violations. The committee was told it would assist 13 States in taking advantage of this service. The Subcommittee on Health and Safety held hearings September 12 on this and three other bills to extend the law to include suspensions. The other bills were H.R. 8388 by Mr. RANDALL; H.R. 9074, which I introduced; and H.R. 9078, by Mr. RHODES of Arizona, author of the bill establishing this program.

Mr. Speaker, it has already resulted in the accumulation of about 68,000 names, and we believe that eventually this legislation will give the States great protection in knowing the past history of persons who apply for permits to drive but who conceal a history of past convictions for these two offenses.

Mr. DEVINE. I would ask the gentleman to whom would this information be available as compiled concerning these habitual violators?

Mr. ROBERTS. If the gentleman will yield further, it would be available to all the States or political subdivisions thereof which request this information from the Secretary of the Department of Commerce.

Mr. DEVINE. What is the cost, if any, entailed in the administration of this bill?

Mr. ROBERTS. This will not increase the budget for this fiscal year, according to the testimony in the hearings. The organization is set up and going. Of course, there will be some added cost because of additional cards to handle the information supplied by the other States which come into the program, but that will be taken care of this fiscal year within the present budget.

Mr. HARRIS. Mr. Speaker, on the question of availability of information, I think the record should be clear. It would not be available to the public, not to just anybody, but would be made available to appropriate officials of the various States and political subdivisions.

Mr. DEVINE. Such as bureaus of motor vehicles and State highway patrols?

Mr. HARRIS. Yes.

Mr. DEVINE. Mr. Speaker, I should like to ask one final question of the gentleman from Alabama. He does not anticipate that this will require for the Department another Assistant Secretary?

Mr. ROBERTS. No. The testimony is that they have a sufficient number of people to handle this.

Mr. DEVINE. Mr. Speaker, I thank the gentleman and withdraw my reservation of objection.

Mr. RANDALL. Mr. Speaker, before us here today is S. 1440, which is being considered under unanimous consent request in the closing days of this session. As has been pointed out by our colleague, the gentleman from Alabama [Mr. ROBERTS] and the chairman of the committee, the gentleman from Arkansas [Mr. HARRIS], this is a bill which amends an act which was approved July 14, 1960, in which act there was established a register in the Department of Commerce of certain motor vehicle operators' licenses.

Before proceeding further, we wish to point out to the House that we had on June 27, 1961, introduced under our own name an identical bill, H.R. 8388. The purpose of both S. 1440 and the identical House version, H.R. 8388, is to amend the existing law to enable additional States to participate in the national driver license register program. The Department of Commerce had earlier informed the Interstate and Foreign Commerce Committee that this amendment would benefit 13 States. The register is to serve as a general clearing house of information concerning persons whose licenses had been revoked for either driving while intoxicated or being convicted of a violation of the highway code involving loss of life. Since the enactment of the act of 1960, it was found that local laws vary with respect to the meaning of the term, "revoked." It seems that many States do not provide for revocation under the two conditions, but do provide for suspension for varying periods of time depending upon the severity or repetition of the offense involved.

S. 1440 as well as H.R. 8388 provides for the register to contain the names of individuals whose licenses had been terminated or temporarily withdrawn as well as those which have been permanently revoked.

As the report of S. 1440 shows, these amendments were proposed as a result of a conference of State motor vehicle administrators, the Bureau of Public Roads of the Department of Commerce, the American Bar Association, and others.

Our interest in the bill came about because a constituent had written us this year pointing out that her mother and a cousin had been killed by a drunken driver near Orlando, Fla., and another lady in the same car living to survive the accident, was so completely patched up as to be a human wreck. She further reported to us that although the culprit had been released on bond for reckless driving, that to the day of the correspondence from our constituent about June 20, 1961, the man who was responsible for the accident and who was a drunken driver, has never ap-

- employees with past service purchase credit for such service within a two-year period from July 10, 1960, to modify the method of computing interest earnings of special Treasury issues held by the civil service retirement and disability fund, and to provide for permanent indefinite appropriations for the retirement fund. This bill will now be sent to the President. pp. 19716-7
33. WETLANDS. Agreed to the conference report on H. R. 7391, to promote the conservation of migratory waterfowl by the acquisition of wetlands and other essential waterfowl habitat. p. 19778
34. CONSUMERS. Sen. Hart discussed the need for a consumer counsel, saying, "No reason occurs to me why we should not now have a Presidential Consumer Counsel." pp. 19793-6
35. TRANSPORTATION. Agreed to limit to one hour's debate on Mon. the conference report on H. R. 6775, to provide for the operation of steamship conferences. pp. 19782-3, 19788
36. LEGISLATIVE PROGRAM. Sen. Mansfield announced that the supplemental appropriation bill will be taken up on Mon. or Tues. pp. 19758, 19772-3
37. ADJOURNED until Mon., Sept. 25. p. 19803

ITEMS IN APPENDIX

38. TEXTILES. Extension of remarks of Sen. Cotton inserting an address before the Wool Manufacturers' Council expressing concern over the effects of imports on the wool manufacturing industry. p. A7593
Extension of remarks of Rep. Lane inserting the statement of William F. Sullivan, president, Northern Textile Association on problems of the industry. pp. A7632-3
39. FOREST PRODUCTS. Extension of remarks of Sen. Wiley stating that "it is essential that we undertake new efforts to further develop -- and, as necessary, expand -- local, State, and Federal efforts to conserve our forests," and inserting an article, "There Is No Surplus Of Forest Products." pp. A7602-3
40. FARM PROGRAM. Extension of remarks of Rep. Kyl inserting an address by Rep. Nelsen criticizing the feed grains program and saying "Let's leave political ping-pong out of the farm game ..." pp. A7603-5
Extension of remarks of Rep. Michel inserting an editorial, "Billion-Dollar Bust," suggesting that this Department's Sept. crop report indicates that the feed grain program "has turned out to be a costly fizzle." pp. A7637-8
Extension of remarks of Rep. Marshall inserting an address before the national plowing contest, "The Land, God's Greatest Gift To Man," and stating that it is a major statement on national agricultural policy. pp. A7644-6
Extension of remarks of Rep. MacGregor inserting correspondence dealing with the resignation of Donald Willette as chairman of the Minn. ASC Committee and stating that it "clearly indicates the nature of the unsavory situation requiring this resignation and provides still another concrete illustration of the 'politics first' character of this administration." p. A7654
41. COTTON. Extension of remarks of Rep. Norrell inserting an article favoring an increase in acreage for the 1962 crop of cotton. p. A7613

42. WILDERNESS. Extension of remarks of Rep. Aspinall inserting a letter to the editor opposing the proposed wilderness bill. p. A7614
43. FOOD FOR PEACE. Extension of remarks of Rep. Breeding inserting an article favoring the use of surplus commodities in a food for peace program. p. A7630
44. FISH FLOUR. Extension of remarks of Rep. Pike urging the development and use of fish flour for its high protein content. p. A7630
45. STOCKPILING. Extension of remarks of Rep. Laird inserting a telegram sent to the President urging a stockpile of dairy products protected from nuclear fallout. p. A7657
46. PERSONNEL; EXPENDITURES. Extension of remarks of Rep. Jensen urging enactment of legislation to reduce the number of Federal employees by 10% and thus reduce expenditures by "over a half billion dollars" annually. pp. A7660-1
47. EMPLOYMENT; CONSERVATION. Extension of remarks of Rep. Johnson, Calif., urging enactment of the proposed Youth Employment Opportunities Act. p. A7666
48. LEGISLATIVE ACCOMPLISHMENTS. Extension of remarks of Rep. Rhodes inserting a staff document of the Republican policy committee on the record of the 87th Congress, including the farm program. pp. A7668-72

BILLS INTRODUCED

49. SURPLUS COMMODITIES. S. 2620, by Sen. Humphrey, to provide for United States participation in international programs of assistance which utilize agricultural commodities; to Agriculture and Forestry Committee. Remarks of author. pp. 19548-9
S. 2630, by Sen. Humphrey (for himself and Sen. Douglas), to establish a lending program to finance the processing and distribution of agricultural commodities; to Agriculture and Forestry Committee. Remarks of Sen. Humphrey. pp. 19705-10
50. FOREIGN TRADE. H. R. 9417, by Rep. Henderson, to impose an additional duty on strawberries and strawberry products; to Ways and Means Committee.
H. R. 9425, by Rep. Johnson, Calif., to amend paragraph 757 of the Tariff Act of 1930 with respect to brazil nuts; to Ways and Means Committee.
S. Con. Res. 52, by Sen. Humphrey, establishing the Joint Committee on Export Trade; to Commerce Committee. Remarks of author. pp. 19445-8
51. LANDS; TIMBER. S. 2613, by Sen. Anderson (by request), to amend section 2 of the act of July 31, 1947 (61 Stat. 681); to Interior and Insular Affairs Committee. Remarks of author. pp. 19436-7
52. SMALL BUSINESS. S. 2600, by Sen. Proxmire, to amend section 7 of the Small Business Act with respect to the maximum loan which can be made to any one borrower; to Banking and Currency Committee. Remarks of author. pp. 19433-4
53. PATENTS. S. 2601, by Sen. Wiley (by request), to establish a uniform national policy concerning rights to inventions under contracts with the U. S. Government; to Judiciary Committee. Remarks of author. pp. 19434-5
54. EXTENSION WORK. S. 2604, by Sen. Carlson, to provide for the issuance of a special postage stamp in 1962 commemorating the centennial of the Morrill Act; to Post Office and Civil Service Committee.

register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this Act.'

"(6) Paragraphs (6) and (7) of subsection (a) of section 5 of such Act of August 12, 1955 (D.C. Code, sec. 1-1105) are hereby renumbered as paragraphs (7) and (8) respectively, and a new paragraph inserted immediately after paragraph (6) as follows:

"(6) Develop and administer procedures for absentee registration for and voting in any election held under this Act by any person included within the categories referred to in paragraphs (1), (2), (3), or (4) of section 101 of the Federal Voting Assistance Act of 1955 (69 Stat. 584).'

"(7) Section 6 of such Act of August 12, 1955 (D.C. Code, sec. 1-1106), is amended by adding at the end thereof the following new subsection:

"(c) Subject to the approval of the Commissioners of the District of Columbia, the Board is authorized to adopt and use a seal.'

"(8) Subsection (a) of section 7 of such Act of August 12, 1955 (D.C. Code, sec. 1-1107), is amended to read as follows:

"(a) A person shall be entitled to vote in an election in the District of Columbia only if he is qualified elector, and except as provided in subsection (e) of this section, he registers in the District during the year in which such election is to be held.'

"(9) Paragraphs (2) and (3) of section 7(b) of such Act of August 12, 1955 (D.C. Code, sec. 1-117), are hereby amended to read as follows:

"(2) he executes a registration affidavit by signature or mark (unless prevented by physical disability) on the form prescribed by the Board pursuant to subsection (c) showing that he meets each of the requirements specified in section 2(2) for a qualified elector or qualifies under procedures established by the Board under paragraph (6) of subsection (a) of section 5 of this Act, and, if he desires to vote in a party election, such form shall show his political party affiliation.'

"(10) Section 7(c) of such Act of August 12, 1955 (D.C. Code, sec. 1-1107), is amended by striking '(b) (3)' and inserting in lieu thereof '(b) (2)'

"(11) The first sentence of subsection (d) of section 7 of such Act of August 12, 1955 (D.C. Code, sec. 1-1107), is amended to read as follows: 'The registry shall be open from January 1 until forty-five days before the first Tuesday following the first Monday in November during each presidential election year except the forty-five day period which ends on the first Tuesday in May, and except as provided by the Board in the case of a special election. The Board may close the registry on Saturdays, Sundays and holidays.'

"(12) So much of subsection (a) of section 8 of such Act of August 12, 1955 (D.C. Code, sec. 1-1108), as precedes clause (1) is amended to read as follows:

"(a) Candidates for office participating in an election of the officials referred to in clauses (1), (2), and (3) of the first section of this Act and of officials designated pursuant to clause (4) of such section shall be the persons registered under section 7 of this Act who have been nominated for such office by a petition—'

"(13) Section 8 of such Act of August 12, 1955 (D.C. Code, sec. 1-1108), is further amended by adding at the end thereof the following new subsections:

"(d) Each political party who has had its candidate elected as President of the United States after January 1, 1950, shall be entitled to nominate candidates for presidential electors. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board of Elections on or be-

fore September 1 next preceding a presidential election.

"(e) The names of the candidates of each political party for President and Vice President shall be placed on the ballot under the title and device, if any, of that party as designated by the duly authorized committee of the organization recognized by the national committee of that party as the official organization of that party in the District. The form of the ballot shall be determined by the Board. The position on the ballot of names of candidates for President and Vice President shall be determined by lot. The names of persons nominated as candidates for electors of President and Vice President shall not appear on the ballot.

"(f) A political party which does not qualify under subsection (d) of this section may have the names of its candidates for President and Vice President of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least 5 per centum of registered qualified electors of the District of Columbia, as of July 1 of the year in which the election is to be held is presented to the Board on or before August 15 preceding the date of the presidential election.

"(g) No person may be elected to the office of elector of President and Vice President pursuant to this Act unless (1) he is a registered voter in the District and (2) he has been a bona fide resident of the District for a period of three years immediately preceding the date of the presidential election. Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he will vote for the candidates of the party he has been nominated to represent, and it shall be his duty to vote in such manner in the electoral college.'

"(14) Subsection (a) of section 9 is amended by striking the second sentence.

"(15) Subsection (b) of section 9 is amended by striking 'ballot' and inserting in lieu thereof 'vote' in the first sentence thereof and by inserting at the end thereof the following new sentence: 'The Board shall by regulation permit voting for electors of President and Vice President by any registered elector who is absent from the District or who, because of his physical condition, is unable to vote in person at the polling place in his voting precinct on election day.'

"(16) Subsection (e) of section 9 of such Act of August 12, 1955 (D.C. Code, sec. 1-1109), is amended by striking 'municipal court of the District' and inserting in lieu thereof 'municipal court for the District'.

"(7) Subsection (g) of section 9 of such Act of August 12, 1955 (D.C. Code, sec. 1-1109), is amended to read as follows:

"(g) No person shall vote more than once in any election, nor shall any person vote in an election held by a political party other than that of which he has declared himself a member.'

"(18) Subsection (a) of section 10 of such Act of August 12, 1955 (D.C. Code, sec. 1-1110), is amended by inserting '(1)' immediately after '(a)', and by adding at the end of such subsection the following:

"(2) The electors of President and Vice President of the United States shall be elected on the Tuesday next after the first Monday in November in every fourth year succeeding every election of a President and Vice President of the United States. Polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian on election day. Each vote cast for a candidate for President or Vice President whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors of the party supporting such presidential and vice presidential candidate.

Candidates receiving the highest number of votes in such election shall be declared the winners, except that in the case of a tie it shall be resolved in the same manner as is provided in subsection (c) of this section.'

"(19) Subsection (b) of section 10 of such Act of August 12, 1955 (D.C. Code, sec. 1-1109), is amended by striking 'said election' and inserting in lieu thereof 'such elections'.

"(20) Section (d) of section 10 is amended by striking 'dies' and inserting in lieu thereof 'dies, resigns, or becomes unable to serve', and by striking 'local committee' and inserting in lieu thereof 'party committee: Provided, That such successor shall have the qualifications required by this Act for such office'.

"(21) Subsection (b) of section 13 of such Act of August 12, 1955 (D.C. Code, sec. 1-1113), is amended by inserting after the words 'a candidate for' the words 'elector of President and Vice President'.

"(22) Subsection (d) of section 13 of such Act of August 12, 1955 (D.C. Code, sec. 1-1113), is amended by striking 'any national committeeman' and inserting in lieu thereof 'any elector, national committeeman'.

"(23) Subsection (e) of section 13 of such Act of August 12, 1955 (D.C. Code, sec. 1-1113), is amended by striking from the first sentence thereof 'the election' and inserting in lieu thereof 'an election'.

"(24) Section 14 of such Act of August 12, 1955 (D.C. Code, sec. 1-1114), is amended (A) by striking from the first sentence thereof 'if employed in the counting of votes in such elections' and inserting in lieu thereof 'if employed in the counting of votes in any election held pursuant to this Act knowingly'; (B) by inserting the word 'knowingly' immediately before the words 'make any expenditure'.

"(25) The title of such Act of August 12, 1955 (D.C. Code), is amended to read as follows: 'An Act to regulate the election in the District of Columbia of electors of President and Vice President of the United States and of delegates representing the District of Columbia to national political conventions, and for other purposes.'

"(26) Clause (A) of paragraph 2 of section 2 of such Act is amended to read as follows: '(A) who does not claim voting residence or right to vote in any State or Territory; and who, for the purpose of voting in an election under this Act, has resided in the District continuously since the beginning of the one-year period ending on the day of such election;'

"SEC. 2. (a) Chapter 1 of title 3 of the United States Code is amended by adding at the end thereof the following new section:

"§ 21. Definitions

"As used in this chapter the term—

"(a) 'State' includes the District of Columbia.

"(b) 'executives of each State' includes the Board of Commissioners of the District of Columbia'

"(b) The table of contents of chapter 1 of title 3 of the United States Code is amended by adding at the end thereof the following:

"'21. Definitions.'

"(c) For the purposes of the Federal Voting Assistance Act of 1955 (69 Stat. 584) the word 'State' shall be deemed to include the District of Columbia.

"SEC. 3. The second paragraph of section 7 of the District of Columbia Alcoholic Beverage Control Act, as amended (sec. 25-107, D.C. Code, 1951 ed.), is amended by inserting after the first sentence the following new sentence: 'Notwithstanding any other provision of this Act, the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license,

class E, of any beverages on the day of the presidential election in the District of Columbia during the hours when the polls are open, and any such sales are hereby prohibited."

And the Senate agree to the same.

ALAN BIBLE,
WAYNE MORSE,
WINSTON L. PROUTY,

Managers on the Part of the Senate.

JAMES C. DAVIS,
JOHN DOWDY,
BASIL WHITENER,
JOEL T. BROYHILL,
W. H. HARSHA, Jr.,

Managers on the Part of the House.

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. BIBLE. Mr. President, the conferees have submitted a unanimous report, and I believe this bill satisfies the obligation imposed on the Congress by the 23d amendment to the Constitution of the United States, granting to the citizens of the District of Columbia the right to vote for President and Vice President of the United States.

Basically, this bill sets the voting age at 21 years old and voting residence requirement at 1 year. The conferees agreed to permit absentee voting in all elections. However, absentee registration will not be permitted except by physically incapacitated persons. The conferees further agreed to exclude the names of the electors on the ballot and to permit only the names of the presidential and vice-presidential candidates. Likewise, it was agreed that a duty would be imposed on a person chosen as an elector to vote in the electoral college for the candidate of the political party which he represents.

The Senate conferees receded to the House on the amendment accepted on the Senate floor last week, and authored by the junior Senator from Iowa [Mr. MILLER].

As I said during the course of the floor debate, I thought the amendment had real merit, but it had not had the benefit of hearings before our committee or on the House side. I have indicated we will have some hearings on this matter.

This amendment would have permitted any person entitled to vote in his home State, and otherwise qualified under the terms of the District of Columbia voting laws, to vote for President and Vice President here, if such person possessed a certificate from his home State stating his eligibility to vote at the time of his departure from his home State.

Mr. President, I believe the conferees, the Senate, and this committee have done their work well. In 1964, for the first time, the Capital City of this great Nation will see its residents vote for President and Vice President. I have every hope that the Congress will enact this bill into law before adjournment, and this prospect seems brighter every day.

I believe that this bill pursues a policy not inconsistent with the voting procedures already tested in most of the States. I further believe that those

States which ratified the 23d amendment will be proud of the job that the Congress has done in this most important area of granting long-overdue voting privileges to residents of Washington, D.C.

Mr. President, I move that the Senate agree to the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

DUAL RATE SHIPPING—UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on Monday next, beginning at 3 o'clock, 1 hour be allotted to consideration of the conference report on the dual-rate bill, half the time to be under the control of the Senator from Tennessee [Mr. KEFAUVER] and half of the time to be under the control of the Senator from California [Mr. ENGLE], the vote to be taken at 4 o'clock.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

The unanimous-consent agreement, as subsequently reduced to writing, is as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That on Monday, September 25, 1961, at the hour of 3 p.m., the Senate resume the consideration of the conference report on H.R. 6775, the so-called dual-rate shipping bill; that debate thereon be limited to 1 hour, to be equally divided and controlled by Mr. ENGLE and Mr. KEFAUVER; and that at the end of said period the Senate proceed to vote on the question of agreeing to the said report.

SEPTEMBER 23, 1961.

Mr. MANSFIELD. Mr. President, I announce to the Senate that insofar as the leadership knows there will be no yea-and-nay votes this evening. That assurance has already been given to some Senators. They have acted on it. I hope the Senate will support me in what I have said.

CONFIRMATION OF NOMINATIONS OF U.S. MARSHALS

Mr. JOHNSTON. I send to the desk the nominations of two marshals for South Carolina, which were reported favorably by the Post Office and Civil Service Committee, and ask unanimous consent that, as in executive session, the nominations be considered.

The PRESIDING OFFICER. Is there objection? Without objection, as in executive session, the nominations will be considered.

The legislative clerk read the nomination of John S. Rowland, of South Carolina, to be U.S. marshal for the eastern district of South Carolina.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of A. Roy Ashley, of South Carolina, to be U.S. marshal for the western district of South Carolina.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Without objection, the President will be notified forthwith of the nominations confirmed.

FREEPORT HARBOR PROJECT, TEXAS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate lay aside temporarily the pending business and proceed to the consideration of calendar No. 1090, H.R. 8320, a bill which was passed earlier this afternoon, but which was reconsidered at my request, because no report was available.

Mr. DOUGLAS. Mr. President, is the Senator proposing to lay aside the Du Pont bill?

Mr. MANSFIELD. To lay it aside only temporarily, but bring it up again.

Mr. GORE. Mr. President, reserving the right to object, did I correctly notice undue emphasis on the word "temporarily"?

Mr. MANSFIELD. Yes. It was to emphasize to the two Senators who have an extraordinary interest in the bill that it was going to be back before the Senate immediately.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 8320) to amend the Freeport Harbor project, Texas.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, I offer an amendment, which I ask to have stated.

The PRESIDING OFFICER. The amendment offered by the Senator from Montana will be stated.

The LEGISLATIVE CLERK. At the end of the bill it is proposed to add a new section:

SEC. 3. Section 206 of the Independent Offices Appropriation Act, 1944 (5 U.S.C. 16a), is amended by inserting "(a)" after "Sec. 206" and by adding at the end thereof the following new subsection:

"(b) In all cases in which under the Constitution or laws of the United States oaths are authorized or required to be administered, such oaths may be administered by the Vice President of the United States."

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Montana.

The amendment was agreed to.

Mr. MANSFIELD. Mr. President, this amendment has been cleared with the minority leadership. I urge that the bill be passed, as amended.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 8320) was read the third time, and passed.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE
(For information only;
should not be quoted
or cited)

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HIGHLIGHTS: House received conference report on public works appropriation bill. Sen. Keating criticized feed grains program. Sens. Javits, Keating, and Proxmire debated merits of milk sanitation legislation. Sen. Kuchel introduced and discussed water rights bill.

SENATE

1. TRANSPORTATION. Agreed to the conference report on H. R. 6775, to extend the authority for dual rate agreements by steamship conferences. This bill will now be sent to the President. pp. 19861-8
2. PURCHASING. Passed without amendment H. R. 8099, to amend the Federal Property and Administrative Services Act so as to remove the limitation on the maximum capital of the General Supply Fund. This bill will now be sent to the President. p. 19854
3. FEED GRAINS. Sen. Keating referred to a report that a golf course in Nebr. received payments under the feed grain program for taking land out of production and stated that "This new incident is just another in a series of unfortunate events. The feed grain program has been terrifically expensive, and it has not cut down production, which was what it was intended to do." p. 19817
4. MILK STANDARDS. Sens. Javits and Keating expressed opposition to enactment of legislation to provide for national milk sanitation standards and contended that New York State had adequate standards for the inspection of milk. Sen. Proxmire disagreed and contended that the proposed legislation would benefit both the consumers and dairy farmers of New York. pp. 19871-2

5. FARM LOANS. Sen. Stennis commended the program of the Farmers Home Administration, reviewed the results of its work in Mississippi, and stated, "This outstanding agency of government is engaged in one of the great programs for helping young people get the proper financing they need to become established on family-size farms ... offers opportunities for farmowners to develop their farms into efficient farm management units ... aids them to make the best possible use of the available resources by developing their lands and acquiring dwellings and essential farm service buildings." pp. 19872-3
6. APPROPRIATIONS. Sen. Prouty objected to a unanimous consent request by Sen. Mansfield for consideration of H. R. 9169, the supplemental appropriation bill for 1962. p. 19816
7. POTATOES. Received a resolution from the Oregon-California Potato Committee which administers Marketing Order No. 59 urging that the Agricultural Marketing Agreement Act of 1937 be amended to delete the present exemption for canned and frozen potato products. p. 19806
8. FARM LABOR. Sen. Proxmire urged the President to veto the Mexican farm labor bill. p. 19816
9. FOREIGN AFFAIRS. Sen. Sparkman and others discussed the results of the recent meetings of the International Bank for Reconstruction and Development, the International Finance Corporation, and the International Monetary Fund. pp. 19846-54
10. FISH FLOUR. Sen. Pell inserted several items discussing the possible uses of a new product, fish flour. pp. 19873-5
11. LEGISLATIVE PROGRAM. Sen. Mansfield announced that the supplemental appropriation bill will be considered today, Sept. 26. pp. 19869, 19876

HOUSE

12. APPROPRIATIONS. Received the conference report on H. R. 9076, the public works appropriation bill for 1962 (H. Rept. 1268). pp. 19934-42
13. WETLANDS. Agreed to the conference report on H. R. 7391, to promote the conservation of migratory waterfowl by the acquisition of wetlands and other essential waterfowl habitat. This bill will now be sent to the President. p. 19904

ITEMS IN APPENDIX

14. RECLAMATION. Extension of remarks of Rep. Saylor discussing the Federal reclamation program, and saying, "A Federal reclamation program, with proper investigation, planning, and construction, is a sound investment in national progress." pp. A7707-8
15. CORN. Extension of remarks of Sen. Douglas inserting an article, "Project Corn Tassel." p. A7708
16. WATERWAYS. Extension of remarks of Rep. Boykin inserting an address, "Tennessee-Tombigbee Waterway Project." pp. A7717-8
17. POSTAL RATES. Extension of remarks of Rep. Goodling discussing postal rates and saying, "Before raising rates it might be desirable to conduct a mental survey and determine to what extent each of us is responsible for the huge annual postal deficit." p. A7734

nicate and explain their ideas and beliefs. But I believe that if we are not given equal facilities in the Soviet Union, we must reappraise the situation and take corrective action.

We are not talking about a letter sent by some Soviet citizen to the United States. We are not even talking about a club or an association in the Soviet Union. We are talking about the Soviet Embassy in Washington, D.C., which has had printed in the United States of America documents which the government of the Soviet Union would like to have the American people read.

All I ask is that our State Department, in its consultations with the Soviet Union on the subject of exchanges, which I have supported, insist upon full reciprocity. We endorse reciprocity with respect to students and cultural events. We see to it that there is a relative balance. We know, for example, that we are perfectly willing to admit many more Soviet students into the United States if the Soviet Union will permit an equal number of American students to enter the Soviet Union. In that respect, the Soviet Union has been mighty sticky; it has been very resistant to an expanded cultural exchange.

I do not wish my position to be misunderstood. I know that the United States of America has historically permitted freedom of communication. I favor it. I hope that policy will not have to be altered. But I am speaking of official documents of a foreign government which today causes U.S. taxpayers to pay billions of dollars in defense against a government which has learned how to use propaganda, and has poisoned the minds of millions of people throughout the world.

If we are to allow this material to flow through the U.S. mails at subsidized rates, then this U.S. Senator demands reciprocity or that we stop it.

I hope other Senators will join with me in this effort.

The PRESIDING OFFICER. The bill is open to amendment.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. METCALF in the chair). Without objection, it is so ordered.

AMENDMENT OF SHIPPING ACT, TO PROVIDE FOR OPERATION OF STEAMSHIP CONFERENCES—CONFERENCE REPORT

Mr. MANSFIELD. Mr. President, will the Chair state the unanimous-consent agreement, entered into last Saturday, relative to the conference report on the dual rates bill?

The PRESIDING OFFICER. Under the unanimous-consent agreement previously entered into, it was agreed that at 3 p.m. today the Chair would lay be-

fore the Senate the conference report on House bill 6775.

The hour of 3 o'clock having arrived, the Chair now lays before the Senate the unfinished business, which will be stated.

The LEGISLATIVE CLERK. The report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

The PRESIDING OFFICER. Under the agreement, the Senator from California [Mr. ENGLE] and the Senator from Tennessee [Mr. KEFAUVER] are equally to divide the time.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Montana will state it.

Mr. MANSFIELD. Will the Chair inform the Senate whether it is a fact that the pending business, the so-called Du Pont bill, has been temporarily laid aside, but that, under the agreement entered into, after the Senate votes on the dual rate bill conference report and on the two treaties, which have already been considered today, the Senate will automatically return to consideration of the Du Pont bill, which then will be laid down as the unfinished business?

The PRESIDING OFFICER. That is correct.

Mr. MANSFIELD. I thank the Chair.

Mr. ENGLE. Mr. President—

The PRESIDING OFFICER. How much time does the Senator from California yield himself?

Mr. ENGLE. Such time as I may require, of the 30 minutes under my control.

The PRESIDING OFFICER. The Senator from California may proceed.

Mr. ENGLE. Mr. President, when we took this bill to conference, it contained seven amendments made to it during the debate in the Senate, six of which were submitted by my good friend, the senior Senator from Tennessee, and one by the senior Senator from Kansas.

The conference retained the amendment submitted by Senator SCHOEPPF, and also retained three of those submitted by Senator KEFAUVER. Of these, one amendment was strengthened, and another was an improved wording of a section that had been stricken.

This is now a better bill, and I commend it to the Senate for adoption of the report.

I point out that, of the so-called Kefauver amendments, of which there were 14, 6 were accepted by me, 4 were rejected by the Senate by rollcall vote, and the remainder were not called up. In other words, we have gone through these matters before. I urge the acceptance of the conference report.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the statement by the managers on the part of the House, even though it has previously appeared in the RECORD. I make this request in order to secure continuity in connection with the presentation of this matter.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H.R. 6775 to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Basically, the difference between H.R. 6775 as it passed the House and passed the Senate is in the manner of approach in four major respects.

(1) The House bill declared exclusive patronage shipping contracts between carriers and shippers to be prohibited except upon prior approval by the appropriate Federal Government agency (now Federal Maritime Commission) and required that the use of such contracts by steamship conferences or individual steamship companies could be approved only if they met certain specified criteria and standards. The bill as it passed the Senate eliminated the prohibition language and affirmatively permitted the use of dual rate, or exclusive patronage, contracts.

(2) The bill as it passed the House made it mandatory that all criteria be affirmatively met before the use of exclusive patronage contracts would be permitted and conference agreements approved by the Commission. The Senate version would permit the use of exclusive patronage contracts unless the Commission made findings to the contrary.

(3) The bill as it passed the House contained several major provisions intended to protect the status of independent carriers who might choose not to join a conference but which would, at the same time, give the conferences full and fair opportunity to operate with effective dual rate systems. The bill as it passed the Senate, for the most part, eliminated all such provisions of an antitrust nature.

(4) The bill as it passed the House provided that conferences of carriers or individual carriers operating in the foreign commerce of the United States must designate persons upon whom service of process may be made within the United States and provide records or other information, wherever located, required by any order of the Commission. These features were stricken from the bill in the Senate version.

As agreed upon, by the conferees, the bill in major respects conforms with the Senate approach on the foregoing points.

Discussion of the differences in more detail follows.

The House bill required findings by the Commission that a proposed dual rate conference agreement would not be detrimental to the commerce of the United States or contrary to the public interest and is not intended, and will not be reasonably likely, to cause the exclusion of any other carriers from the trade. The Senate version omitted the last provision and, with respect to the others, provided that a dual rate agreement should be approved unless the Commission found it to be detrimental to the commerce of the United States or contrary to the public interest. The conferees' agreement adopts the Senate amendments.

The bill as passed the House required that the shippers' contract under a proposed conference agreement must contain a provision assuring space on vessels to contract signers. The Senate omitted this provision and substituted a provision that a contract signer be released from his contract with respect to

a particular shipment if conference carriers could not provide space for his shipment. The House conferees agreed to this change.

The House bill provided that the shipper's contract with the conference should cover only those goods to which he has the legal right to select the carrier at the time of shipment. The Senate version added a proviso that if the shipper divested himself of that right before shipment with intent to avoid his contract, such conduct constituted a breach of contract. The conference agreement adopted the Senate amendment with a minor amendment.

The Senate added a provision that a conference contract must exclude cargo carried in bulk without mark or count other than liquid cargo and the conference agreement adopts the amendment.

The bill as it passed the House required the Commission to withdraw its permission for the use of a dual rate system where it finds, after notice and hearing, that the use of such contract tends to cause the elimination from, or prevent the entry into a trade of any carrier. The Senate struck out this provision. The conferees agreed to the Senate version.

The House bill stated that no conference contract could be approved by the Commission which authorized agreements between carriers or conferences of carriers serving different trades that would otherwise be naturally competitive unless in the case of agreements between carriers, each carrier, or in the case of conferences, each conference retains the right of independent action. The Senate struck out this provision. The Senate receded from its position with an amendment, accepted by the House conferees, limiting the prohibition on carrier agreements to carriers not members of the same conference.

The House bill contained a provision prohibiting shippers who act as carrier agents from representing such carrier in conference activities unless no other qualified person was available. The Senate struck the provision and the House receded from its position.

The Senate omitted a provision from the House bill prohibiting agreements whose probable effect will be reasonably likely to exclude any other carrier from the trade. The House receded from its position.

The House bill contained a requirement that no conference agreement shall be approved unless it designated a person within the United States upon whom service of process could be made, effective against all members of the conference and contained an agreement to provide documents and records required by the Commission, together with another similar provision as to all common carriers by water in the foreign trade. The Senate struck out both provisions. The conference agreement adopts the Senate position.

The House bill required conference agreements to contain provisions for policing of the obligations under them and for reasonable procedures for consideration of shippers' complaints. The Senate struck out the provision and inserted in lieu thereof authority in the Commission to disapprove an agreement after notice and hearing on a finding of inadequate policing and failure to maintain procedures for hearing shippers' complaints. The conference agreement adopted the Senate amendment.

The House validated existing agreements which are lawful immediately prior to the enactment of this act for a further period of 1 year after enactment, unless sooner disapproved, canceled, or modified by the Commission. The Senate added a proviso that existing agreements rendered unlawful by the act must be amended to comply with the act and if such amendments are filed for approval within 6 months after enactment, such agreements shall be lawful unless and until disapproved, canceled, or

modified by the Commission but agreements not so amended within the period if thereafter found in violation of the act may be declared unlawful from the expiration of the 6-month period. The conferees adopted an amendment providing that amended agreements filed within the 6-month period are lawful for a further period of 1 year during which year the Commission shall approve, disapprove, cancel, or modify in accordance with this act.

The House rendered unlawful reductions in rates or charges by a common carrier or conference of carriers for the purpose of destroying competition and provided a penalty therefor and authorized reductions made in good faith to meet competition. The Senate struck out the provision and the House receded from its position.

The House authorized the solicitation and receipt of information by a conference to determine whether a shipper or consignee or conference member has committed a breach of his agreement with the conference. The Senate version omitted the provision but receded from its position with an amendment to make the section applicable to a larger class of persons.

The House authorized the Commission to make rules and regulations necessary under specified sections of the act; the Senate amended by broadening the authority to include the entire act. The House receded from its position.

The Senate amended the bill to include a new section authorizing the Governor of a State, Commonwealth, or possession of the United States and any port authority or municipality operating a port to file a protest concerning any conference rate or regulation within 30 days of its filing with the Commission on the ground of unjust discrimination. Within 120 days, the Commission would be required to determine whether the rate or regulation is discriminatory and, if so, may set it aside. The conference agreement adopted the Senate amendment with an amendment eliminating the reference to port authorities and municipalities and increasing the time of Commission action to 180 days.

In addition to the foregoing, there were a number of minor, technical, or conforming amendments agreed to by the conferees.

The Senate amended the title of the bill and the conference agreement adopts the Senate amendment.

HERBERT C. BONNER,
EDWARD A. GARMATZ,
THOMAS N. DOWNING,
BOB CASEY,
THOR C. TOLLEFSON,
JOHN H. RAY,
W. S. MAILLIARD,

Managers on the Part of the House.

Mr. ENGLE. Mr. President, I should like to point out that the bill as passed by the House of Representatives was substantially different from the bill as reported to the Senate by the unanimous vote of the Senate Commerce Committee. I also wish to point out that the House conferees, upon consideration of this matter, joined unanimously with the Senate conferees, and that the conference report now before this body has the unanimous acceptance of both the Senate conferees and the House conferees. In addition, the conference report is substantially the bill as reported to the Senate by the Senate Commerce Committee without a dissenting vote.

In my opinion, the statement by the House conferees is very revealing. In it they state:

Basically, the difference between H.R. 6775 as it passed the House and passed the Sen-

ate is in the manner of approach in four major respects.

(1) The House bill declared exclusive patronage shipping contracts between carriers and shippers to be prohibited except upon prior approval by the appropriate Federal Government agency (now Federal Maritime Commission) and required that the use of such contracts by steamship conferences or individuals steamship companies could be approved only if they met certain specified criteria and standards. The bill as it passed the Senate eliminated the prohibition language and affirmatively permitted the use of dual rate, or exclusive patronage, contracts.

Mr. President, we did that deliberately, because it seemed to us that we should state what we are doing; and therefore we state specifically and clearly what we are doing in this instance—that is, that we are authorizing these contracts affirmatively, and then we are subjecting them to certain conditions.

I read further from the statement of the managers on the part of the House:

(2) The bill as it passed the House made it mandatory that all criteria be affirmatively met before the use of exclusive patronage contracts would be permitted and conference agreements approved by the Commission. The Senate version would permit the use of exclusive patronage contracts unless the Commission made findings to the contrary.

This is part and parcel of the same proposition—namely, we make it clear, and I believe we should make it clear, not only to the Congress but also to the American people—that what we are doing is that we are authorizing a conference system.

The House version of the bill stated the matter in reverse; it said that conference systems are unlawful, with certain exceptions. We provide that conference systems are lawful, subject to certain conditions. We believe that is the more sensible approach, the franker approach, and the one which more clearly defines the legislative intent.

I read further from the statement of the managers on the part of the House:

(3) The bill as it passed the House contained several major provisions intended to protect the status of independent carriers who might choose not to join a conference but which would, at the same time, give the conferences full and fair opportunity to operate with effective dual rate systems. The bill as it passed the Senate, for the most part, eliminated all such provisions of an antitrust nature.

We found it wholly impossible to authorize what amounted to a quasi-monopoly or a semimonopoly and then turn around and deauthorize it. There was simply no way to do so—in other words, to march up the hill, and then march down again. That is why we eliminated those provisions.

We admit that what we are attempting to do is affirm the system of conference contracts which have been in effect throughout the international trade since about 1877. However, we make plain that we propose to superimpose on those conference systems the finest possible regulatory power, to the maximum that we may possibly extend U.S. regulatory power into the international area; and that is what we have done. I read

further from the statement of the managers on the part of the House:

(4) The bill as it passed the House provided that conferences of carriers or individual carriers operating in the foreign commerce of the United States must designate persons upon whom service of process may be made within the United States and provide records or other information, wherever located, required by any order of the Commission. These features were stricken from the bill in the Senate version.

Why were they stricken? We struck them out because American regulatory law cannot impose an extraterritorial effect. There is no question about it. Twelve countries came before the State Department and submitted their program and their objections to our committee, in which they objected to submitting themselves to the regulatory power of the United States. We agree with that statement. We think we can no more subject them to our regulatory power than England, the Netherlands, or Japan could subject us to their regulatory powers.

As far as we have been able to go, however, we have gone, which is that American ship lines must submit their records. We cannot go further than that.

The conference report of the House goes on to state:

As agreed upon, by the conferees, the bill in major respects conforms with the Senate approach on the foregoing points.

Of course, they are the crucial points that came up in conference. I emphasize again that this is a unanimous conference report. The House committee that sent the bill to the Senate of the United States, which was subsequently changed by our committee, agreed to the language that we had devised as the best possible language, and receded from the points they had made.

The bill was unanimously reported by the Senate Committee on Commerce. It passed the Senate of the United States without a rollcall, although there were several rollcalls on amendments proposed by the Senator from Tennessee [Mr. KEFAUVER] which embodied language in the House bill. We thereupon went to conference, and the House conferees, the sponsors of the language, themselves, thereupon thought the Senate approach to this question was the most sensible and correct.

Today we come before the Senate with a unanimous report, signed by all the Democrats and all the Republicans, all the members of the conference, of both the Senate and the House. If it take more than that to get a bill that has been in conference agreed to, I do not know what it takes.

I think we have done everything we could do. We have convinced the House conferees. They have agreed with us. I hope the Senate will approve and adopt the conference report.

Mr. President, I yield the floor.

Mr. KEFAUVER. Mr. President—

The PRESIDING OFFICER. The Senator from Tennessee is recognized. How much time does the Senator yield to himself?

Mr. KEFAUVER. I yield myself 15 minutes.

In the New York Times of yesterday I read an article by Russell Baker, with the dateline of Washington, which contained the words:

I've never seen them as mean as they are this year; a 10-year Member of the Senate complained recently of the House of Representatives: "They get their backs up over everything and don't give on anything."

On this occasion I take exception to what somebody told Mr. Baker, because, if I have ever seen a case where the House yielded on all of the provisions which were designed to protect the export trade and the shippers of the United States, it is in this case.

Mr. President, I am opposed to the adoption of conference report on H.R. 6775, and I shall vote against it.

This legislative proposal grew out of the Isbrandtsen decision in 1958, which outlawed dual-rate systems when they are used as "predatory devices" to drive out all independent competition. I am strongly of the opinion that dual-rate systems should be outlawed when they are so used. Therefore, I can see no reason why the industry cannot live under the Shipping Act of 1916 as interpreted under the Isbrandtsen decision. H.R. 6775 goes way beyond such a system of operation.

In the Isbrandtsen decision it was held that where a dual rate was put into effect for the purpose of eliminating a competitor—and the competitor is about the only protection the American shipper has—it is a predatory device under section 14, third, of the Shipping Act of 1916, and is, therefore, illegal. It does not mean that a conference is illegal, or that conferences cannot be had, and it does not mean that dual rates cannot be used. The decision simply states that wherever dual rates are used as a system for eliminating a competitor and driving it out of business, it is a violation of the Shipping Act of 1916, and is unlawful.

What H.R. 6775 attempts to do is make it possible for conferences to eliminate all competition, to fix rates practically as they please, to place the foreign commerce of this Nation under the domination of conference cartels, which are in turn dominated by foreign shipping interests and supercartels, and which, under this measure, will be completely dominated by foreign shipping interests.

There have been conferences in existence since 1916, and never has the Maritime Commission ruled that a conference is illegal because of rates, or for any other reason. Yet there are many discriminations against American shippers today about which I shall speak in a few moments. Moreover, these discriminations are very mild, indeed, as compared with the discriminations that will be put into effect against American shippers if this outrageous bill becomes law.

As I have said on this floor many times, and as I said earlier in our consideration of H.R. 6775, I am against monopolies and cartels whenever and wherever they exist. However, I feel particularly strong about the international ship cartel. In my long statement last week with respect to this subject,

I outlined in some detail, as did the Senator from Wisconsin [Mr. WILEY], the blatant disregard that the international carriers have had for our laws and their disinterest in our economic welfare. As brought out vividly in thousands of pages of testimony before the House Antitrust Subcommittee, of which the distinguished Representative, EMANUEL CELLER, is the chairman, the international carriers have in a large number of instances engaged in nefarious and illegal practices. They have cheated among themselves, they have discriminated against American shippers, including the U.S. Government. They have used every predatory device imaginable to drive independent competitors out of business. Yet it is proposed here to give carte blanche authority for them to do anything they want to do in regard to the foreign commerce of the United States.

In fact, it is hard to conjure up anything to which they have not stopped. True, the control of these cartels which have engaged in this conduct is in the hands of the foreign shipping lines, but many American lines have participated in this misconduct.

When pressure was brought to bear to change the basic Shipping Act of 1916, as amended, exhaustive hearings were held by both the House Committee on Merchant Marine and Fisheries and the House Committee on the Judiciary. The House bill, which resulted from these hearings, contained what might be described as a limited monopoly system. In my estimation, the bill was far from perfect, as it contained only minimal protections for independent carriers and for American exporters and importers. However, it did contain some protections and they were urgently necessary.

The Senate version, on the other hand, contained almost none of these protections. The Senate version, as reported by the Senate Commerce Committee, was radically different from the House version. It was drafted—and I think admittedly so—to suit the needs of the shipowners, most of whom are foreign, and not to fit the needs of shippers or independent carriers.

When the Senate Commerce Committee version came to the floor of the Senate, I offered a number of amendments to it. They were designed primarily to restore the protections contained in the House version. A number of these amendments were accepted by the managers of the bill and adopted by the Senate. To my amazement, some of these were either dropped out or weakened in the conference, although from a substantive standpoint they had been agreed to by both the Senate and the House.

One set of my amendments proposed to restore the vital antitrust protections which were contained in the House version. These had been described by the Attorney General as indispensable.

I should like to put the Attorney General's letter in the RECORD at this point. The Attorney General said, in substance, that no bill should be passed at all unless the antitrust provisions were included. I ask unanimous consent that the letter may be printed in the RECORD in full.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 5, 1961.

Hon. ESTES KEFAUVER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KEFAUVER: This is in response to your letter of August 31, 1961, requesting the views of the Department of Justice on H.R. 6775, as it was reported by the Senate Committee on Commerce.

The Senate committee version of H.R. 6775 differs materially from the bill as passed by the House of Representatives. The bill, as it was passed by the House of Representatives, contained specific safeguards to prevent ocean steamship conferences from using dual rate systems or other concerted activity as predatory devices to drive nonconference competition out of business. These safeguards have been omitted in the Senate committee bill. In particular the Senate committee bill has deleted: (1) The provision that the dual rate contracts referred to in the bill shall not be intended or reasonably likely to cause the exclusion of any other carrier from the trade; and (2) the provision that the Board shall not approve agreements whose probable effect will be reasonably likely to exclude any other carrier from the trade.

The deletion of these provisions would have the effect of reversing the rule of the *Isbrandtsen* case, thereby permitting ocean steamship conferences, which are international cartels, to stifle independent competition by resort to predatory dual rate systems. In the opinion of the Department of Justice these provisions constitute competitive safeguards which are indispensable to any reasonable enactment on this subject. The public interest would be disregarded were these provisions to be omitted.

It is our opinion that no legislation on this subject should be enacted unless such provisions are included. We urge that these provisions, as they have appeared in the House-enacted bill, be restored.

In addition, for your information I am attaching a copy of a letter from Deputy Attorney General BYRON WHITE to Senator WARREN G. MAGNUSON, which expresses in detail the views of the Department of Justice on the Senate Merchant Marine and Fisheries Subcommittee print, which is substantially similar to the Senate committee version of H.R. 6775.

Sincerely,

ROBERT KENNEDY,
Attorney General.

Mr. KEFAUVER. Mr. President, on a rollcall vote in the Senate, these amendments were defeated. In the conference, it was agreed to drop these provisions from the bill. For this reason alone, I would feel compelled to vote against the conference report.

Yet, there is another most important provision in the bill which is equally as bad as the omission of antitrust safeguards. I refer to that provision which legalizes super cartels. H.R. 6775 not only approves cartels in each individual trade affecting the foreign commerce of the United States, it permits these individual cartels to join into one or two super cartels of gigantic size. There is no economic justification whatever for this provision and it can only do serious harm to American interests. I think this provision is an utter disgrace and completely uncalled for.

I have a number of other objections to the bill which I shall not reiterate here.

However, the net effect of the whole piece of legislation is to legalize cartels in all of the ocean trades which serve the foreign commerce of the United States.

There is no effective control over the use by the conferences of predatory practices to drive out all independent carriers.

There is no effective control over rates to be charged for the carriage of all American exports and imports.

There is nothing to prevent the legalized cartels from joining in one huge super cartel to dominate completely the foreign commerce of the United States to fix rates, and to do anything else that pleases them.

Who will be hurt by all of this?

Not the American shippers. They will stay in the cartels and enjoy the benefits of high noncompetitive rates. Yet their benefit is small compared to the rewards which will be given to the foreign shippers which dominate virtually all of these conferences. We already subsidize American ship owners, and, by this act, we are granting a much larger, even if indirect, subsidy to foreign ship owners. It is the American exporter and importer who must pay this subsidy, and the American consumer who will have to pay higher prices for imported articles.

I refer, for example, to farmers who manufacture cheese, as mentioned by the Senator from Wisconsin [Mr. WILEY]; to chemical factories; to steel mills; to those who make automobiles; and so on. I refer to any line of endeavor in which one is engaged in the United States. All will pay.

Thus, the people who will get hurt most are the great mass of American exporters and importers. Once independent carriers are driven out, they will have no choice but to pay the artificially high cartel rates.

The President and the Congress have spent much time, thought and effort to devise ways to decrease the gold drain from our country.

The drain has been temporarily halted. We know the great distress we have suffered and which we may suffer in the future if we do not prevent the drain of gold from our country. This drain of gold has been due in large part to the fact that many American exports are not competitive. This, in turn, is due at least in part to the high shipping costs which must be paid by American exporters as compared to much lower inbound shipping costs.

The bill approved by the conference will make it increasingly difficult for American exporters to compete abroad. Our gold drain will increase. And while this is going on, we will be lining the pockets first and foremost of foreign ship owners.

I do not think this bill is in the best interest of the United States and I shall vote against it.

I hope the Senate will reject the conference report.

Mr. President, I wish to sum up by making two things crystal clear.

The first is that the conferences which will control American shipping, as will be seen from page 18167 of the RECORD for September 13, 1961, are dominated

by foreign shipping lines. Only in five of these conferences do American member lines outnumber foreign lines. In some of the cartels handling American shipping there are no American lines whatsoever. Americans would be outvoted three to one if an international super cartel of all these cartels was formed.

These are the cartels which will fix rates, conditions and terms upon which American shipping will take place.

Never before in the history of the United States has the United States placed the commerce of the United States completely in the hands of people who will reap the benefits of a monopoly.

Never in the history of the United States, even with a ratemaking ability retained in the hands of some commission, has the United States placed such control in foreign-owned corporations.

Never in the history of the United States have there been legalized foreign dominated supercartels.

The PRESIDING OFFICER. The 15 minutes the Senator yielded have expired.

Mr. KEFAUVER. Mr. President, I yield myself 5 more minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 more minutes.

Mr. KEFAUVER. The second question I ask is, "What have these cartels done already?" What they have done already is only an example of what we shall see more of, on a larger scale, in the days to come.

I do not care about what line of endeavor one wishes to talk—farm products, automobiles, steel—we find that the rate from an American port to a port abroad is virtually always greater, and sometimes many times greater, than the rate from the same port back to the United States.

For automobiles, from New York to Liverpool, the rate is \$23 per 40 cubic feet. The rate from Liverpool to New York is \$11.55 per 40 cubic feet.

For industrial chemicals, the rate from New York to Hamburg is \$6.61 per hundredweight. The rate from Hamburg to New York is 82 cents per hundredweight.

New York to Rotterdam, \$5.85 per hundredweight; Rotterdam to New York, 82 cents.

Many of these items were put into the RECORD by the distinguished Senator from Wisconsin [Mr. WILEY]. He was interested in cheese. Shippers must pay twice as much to get cheese from Michigan or Wisconsin or Minnesota to Denmark as shippers from Denmark must pay to get their cheese to some place in the United States.

Mr. CARROLL. Mr. President, will the Senator yield?

Mr. KEFAUVER. I am happy to yield to my distinguished friend from Colorado, who understands the problem thoroughly.

Mr. CARROLL. Since our discussion on this subject a few days ago, before the bill went to conference, I thought I would look into the effect of shipping rates on one of our largest industries in Colorado, The Colorado Fuel & Iron Co. C.F. & I. is an industry that employs

about 12,000 workers. The industry has been struggling from year to year, sometimes operating in the "red," because of low-priced competitive imports.

The Colorado Fuel & Iron Co., located in Pueblo, Colo., began to lose its markets for wire and pipe products as foreign countries poured cheaper identical products into this country.

It is traditional to blame the cause of lower-cost foreign products on "cheap labor". But this is not the full story. In some circumstances the supplemental industrial benefits of foreign labor—from free meals to free medical assistance—almost equalize labor costs with our own industrial labor costs.

The difference in price of American-made products and foreign-made products, as the able Senator from Tennessee has pointed out, is due largely to the difference in steamship freight rates in and out of the United States. For example, one steamship conference dominated by foreign countries by a margin of 17 to 6 has fixed dual rate charges on steel wire and pipe shipped out of the United States at \$61.25 per ton. That is what it costs the Colorado Fuel & Iron Co. to ship those products abroad.

I should say that is what it used to cost. A few minutes ago, as I looked at those figures, I put in a telephone call and asked one of the executives "What are you shipping today?"

He said, "We have virtually abandoned our exports because we cannot compete." He agreed that adverse shipping rates in the nature of almost 2 to 1 against them made exporting steel wire and pipe prohibitive.

Mr. KEFAUVER. If they have abandoned exports now, what would they do if we should place complete control in the hands of this foreign dominated international cartel? That is something else to think about.

Mr. CARROLL. We use this as Exhibit A for the able Senator from Tennessee to show why there should be further study given to this important issue. I have given you the rate C.F. & I. must pay to export its products. Imports of the exact same steel wire and pipe products come into this country without being governed by cartel dual-rate shipping contracts. The freight charges on incoming wire and pipe is \$33 per ton.

This enables a foreign country 7,000 miles away to deliver pipe to Denver at \$20 per ton cheaper than the Colorado Fuel & Iron Co., 110 miles to the south of Denver.

Not only is this true in the industrial field, as the able Senator from Tennessee has so intelligently pointed out, but it also has to do with agriculture in the Rocky Mountain area, which is similarly affected.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KEFAUVER. Mr. President, I yield myself an additional 5 minutes.

Mr. CARROLL. Mr. President, will the Senator yield further to me?

Mr. KEFAUVER. I am very happy to yield. The Senator is stating illustrations that are vital to the economy of the United States. I am glad to yield to him.

Mr. CARROLL. We in Colorado depend substantially on foreign markets

for disposition of our surplus Hard Red Winter wheat.

This wheat is partially shipped in independent, or so-called "tramp" steamers.

If the independent shipping lines are not protected with antitrust safeguards in the bill before us they will be driven from the business by the price-fixing cartels, which require that all products must be shipped on conference lines in order to qualify for the special low rates.

Once the independent tramp steamers are no longer competing to carry our Colorado Hard Red Winter wheat we can expect the shipping cost of wheat to rise.

This will throttle our opportunities to sell surplus wheat abroad in commercial markets at competitive rates.

Mr. President, I am opposed to agreement to the conference report on H.R. 6775, the so-called dual-rate shipping bill, because it does not contain the necessary antitrust safeguards to protect American independent steamship companies and American exporters.

We were hopeful that the conferees would adopt the antitrust safeguards in the House bill.

They did not and I therefore take the position I did during consideration of the bill in the Senate, that the bill is not in the public interest.

The bill, as now written, places in the hands of foreign-flag steamship companies the power to determine shipping rates to be charged by U.S.-flag ship companies.

They will do this through their domination of the steamship conferences, an international rate-fixing cartel arrangement which this bill legalizes.

This bill, in the words of Congressman Celler, chairman of the House Judiciary Committee, fails to protect American consumers from "monopolistic price fixing on imported goods."

I understand that the able Senator from Tennessee has only a few minutes remaining on this question. I commend him for his leadership in opposition to this conference report since it fails to carry the necessary antitrust safeguards. As I said the other day, it is my hope that the President of the United States, the Attorney General, and especially those who are in charge of the antitrust division of the Department of Justice, will give close scrutiny to the report should it pass the Senate. If we accept the conference report—and, to be realistic, I think it will be accepted at this late point in the session—I hope the President will put the conference report in his pocket and not let it become law.

Mr. KEFAUVER. Mr. President, I thank the Senator from Colorado for the study and research that he has given this problem. I know that if Senators would consider what the conference report would do for the industry and agriculture in their sections of the country, they would find out what the discriminations against their own industry and agriculture are now, when there is still some competition in international shipping, and then if they would consider what will happen to them when that competition is removed and the matter is placed almost exclusively in the

hands of the foreign cartels, I do not believe there would be a handful of Senators who would yield to the influence and persuasion of the shipping lines to support the bill or the conference report.

Mr. CARROLL. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. CARROLL. That is precisely the same point that the Senator from Tennessee and I have been trying to make. I can understand the desire of the shipping lines themselves to get together in conferences or cartels, to stake out economic areas in which they can have perhaps some greater stability. But, as the able Senator from Tennessee has said, if each Senator and each Representative knew of the economic impact upon his own area, I am sure that the conference report would be under debate for a long time. We all need information about the bill. What I have said is no reflection on the able Senator from California and the able Senator from Washington. The conference report has come from a committee that has given the subject some study, but I think too much emphasis has been given to what the shipping lines want rather than its economic impact upon the industry of the Nation that is hard hit by low-priced imports and especially its impact on the small businessmen of the Nation.

I thank the able Senator from Tennessee again for his leadership on this question.

Mr. KEFAUVER. I thank the Senator from Colorado. We were talking about steel. We know we have been losing our foreign market. The steel companies themselves will say that one reason is because of the discrimination in rates in the shipment of steel, for example, to ship steel from New York to Tokyo it costs \$61.25 per long ton, while from Tokyo to New York it costs \$33 per long ton.

I see my friend the Senator from Michigan [Mr. McNAMARA] in the Chamber. He is interested in the success of the automobile industry. The cost of shipping an automobile from New York to Liverpool is \$23 per 40 cubic feet, but from Liverpool to New York it is \$11.55 per 40 cubic feet. It costs about half to ship an automobile to the United States as it costs to ship one to Europe.

The PRESIDING OFFICER. The time of the Senator from Tennessee has again expired.

Mr. KEFAUVER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. KEFAUVER. Mr. President, I know that the Senator from California wishes to use some of his time.

The PRESIDING OFFICER. Does the Senator from California wish to yield some time?

Mr. ENGLE. Mr. President, I am glad to yield 5 minutes to my distinguished friend of my time in order that his presentation may be complete.

Mr. President, how much time do I have remaining? Twenty minutes. I should like to reserve the last 10 minutes.

The PRESIDING OFFICER. The Senator has 19 minutes remaining.

Mr. ENGLE. I will yield 10 minutes of my remaining time to the distinguished Senator from Tennessee.

Mr. KEFAUVER. I did not ask the Senator to yield time to me, but if he will do so, I will be delighted to have it.

Mr. ENGLE. I wanted my friend from Tennessee to present his case in full. He has lost it in every forum so far. We have a unanimous conference report. It was passed in the House unanimously with only a voice vote. I should be glad to have the Senator from Tennessee take whatever time he wants. I will yield 10 minutes of my time to him.

Mr. McNAMARA. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield to the Senator from Michigan.

Mr. McNAMARA. I thank the Senator for yielding. He referred to the automobile industry. I point out to the Senator from Tennessee something he undoubtedly already knows. As a result of these unfair rate charges and other things the automobile industry has been compelled to build many of its automobiles in European countries. Recently I had an opportunity to be in Norway, and I saw many new Chevrolets and Fords on the streets of Oslo. Not one of them was made in the United States. They were all made in European plants. The difference in the freight rates is one of the causes of the exportation of jobs to foreign countries. Where formerly those cars were made in the United States and shipped to Norway, for example, now, because of this discrepancy in shipping rates, they are made in foreign countries. It goes much deeper than what appears on the surface.

Mr. KEFAUVER. I thank the Senator. The cost of shipping automobiles and the disparity in rates as between the United States and other nations of the world is one of the main reasons why more and more cars are being manufactured outside the United States. It is one of the main reasons why we are seeing more and more foreign cars in the United States. I make it perfectly clear that I am all for our foreign neighbors doing business well and getting along fine. I am not for discriminating against the industries and agriculture of the people of the United States, however. The jobs that have been lost in the United States because of the discrepancy in freight rates mount up very substantially. To think of placing the ability to do these things in the hands of an international cartel, in which we have only a minor voice, is really a very remarkable thing.

I hope Senators who have the RECORD of September 21 will look at the speech of Representative EMANUEL CELLER. They will find there that he lists practically every kind of thing that we make in the United States. His speech begins at page 19303.

He talks about automobile equipment. He gives figures that we have given in the Senate. Then he discusses industrial chemicals. He shows the freight rate of major appliances. In the testimony it was brought out that we had lost most of our market in Greece for electrical appliances, electric stoves, and

other things, because of the great difference in the shipping rate from Germany and from the United Kingdom to Greece as compared with the rate from the United States to Greece.

We find that not only does the shipping rate to and from the United States work against us, but that even in trying to sell something to Brazil, which is as close to the United States as it is to Great Britain, for example, we find that Britons enjoy a lower shipping rate than we do. So they get an advantage over us no matter where they sell. We find discrimination also in jewelry.

We find the same picture in electronics. We have held many hearings on the electrical manufacturing industry and electrical equipment industry. They are badly discriminated against. In the shipment of rubber, there is a higher rate on rubber from the United States to any foreign country than there is from any foreign country to the United States.

All this means the loss of American jobs. All this means that we are placing the American worker at the mercy and under the control of a foreign-dominated shipping cartel.

We have been talking about farm machinery. We see a great deal of foreign-made farm machinery in this country. There is a great discrimination in freight rates there, too. The same thing is true of textile machinery. Sometimes we hear about farmers talking about competition in connection with fertilizer. Some fertilizer companies fuss about it a great deal. They talk about not being able to ship fertilizer abroad.

If we look at the record we find that the discrimination is substantial between inbound and outbound fertilizer. The same thing is true in air conditioning and refrigeration, as well as in some of the other items.

A great many Senators are interested in agriculture. The Secretaries of Agriculture in both Republican and Democratic administrations have always felt that dual rates were bad, and showed that farmers would have to pay higher rates for shipping products abroad than the rates that are paid for shipping products into the United States.

The Department of Agriculture even opposed dual rates, per se, in the 1959 hearings held by the House Antitrust Subcommittee.

This is a technical matter, but it is an extremely important one. It would be one thing if this law were to be in effect for a limited period of time, so that there would be some lever over the international cartel to make it behave. However, we are being asked to legislate for all time in the future, or at least until the law is changed by going through the procedures of Congress. We are asked to pass a bill which is admittedly aimed at eliminating competition, which admittedly places major control of international shipping in the hands of foreign lines, and which gives very little protection to the American shipper, the American farmer, and the independent American carrier in the way of furnishing competition, and therefore keeping down rates.

I appreciate the Senator's yielding to me at this time.

The PRESIDING OFFICER. The time of the Senator from Tennessee has expired.

Mr. ENGLE. Mr. President, the Senator from Tennessee has referred to the question of whether the conference rates have stifled our exports. My answer is that they have not. I say that notwithstanding the fact that I do not agree with the disparity of rates between outbound and inbound traffic. I know that that has occurred. Representative CELLER in his discussion in the House the other day mentioned the matter and put in quite an elaborate statement.

Let me make it plain that we have undertaken to put on top of these conference systems a regulatory power that will make it possible for them to continue to do that if the regulatory power operates the way we think it should.

The Senator from Tennessee had introduced an amendment. It was held in conference. It was a fine amendment. It was an amendment that said that if any rate was so unreasonably low or so unreasonably high as to be detrimental to the commerce of the United States our commission was not only empowered but directed to break the conference.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. ENGLE. I have already yielded 10 minutes.

Mr. KEFAUVER. I will yield 1 minute of my time to the Senator from California.

Mr. ENGLE. I am sorry but I decline to yield.

Mr. KEFAUVER. I wished to correct a statement the Senator made.

Mr. ENGLE. Mr. President, I will yield for a correction, but not too long a one, because I have only 9 minutes remaining.

Mr. KEFAUVER. It is true that an amendment was offered, which was accepted by the Senator from California and accepted by the Senate, which would have required the Commission to disapprove rates that were so unreasonably low or so unreasonably high as to detrimentally affect the commerce of the United States. That was in section 15. What the Senator from California has done in conference is to take the provision out of section 15 and place it in section 18, where it relates to the filing of tariffs. Even though the rate may be disapproved for a considerable time, at least the conference can continue to operate until the Commission considers the question and readjusts the rate. This condition could not have started if it had been left in section 15; but it has been placed in section 18, where it does not mean much.

Mr. ENGLE. It means much. It means precisely the only thing that represents the power our Commission has, and that is the power to pull an American-flag line out of the conference. That is what it means; that is what the conferees have provided.

I have a memorandum with respect to what the trade of the United States has been. There has actually been an increase. I ask unanimous consent that

the statement may be printed at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

Question: Have conference freight rates stifled our exports?

Answer: They have not. On September 14, 1961, we asked the Maritime Administration's Office of Shipping Statistics to compile the figures on the liner cargo—that is, ocean common carrier cargo—carried into and out of the United States from 1958 through 1960. We picked four of the major trade routes to and from the United States. The figures were compiled from Maritime's forms Nos. 7801 and 7802 which are filed with Marad by all ocean common carriers serving U.S. ports.

Our exports have grown substantially in three of the four trades, and in the fourth have held their own.

To be more specific:

1. On trade route 12 (U.S. Atlantic ports to and from the Far East), we exported 2,360,000 long tons of liner cargo in 1958; and in 1960 this had increased to 2,721,000 long tons. Imports rose somewhat less during the same period; from 1,670,000 long tons in 1958 to 1,728,000 long tons in 1960.

2. On trade route 29 (U.S. Pacific coast ports to and from the Far East, including

also Hawaii and Alaska), 1,511,000 long tons were exported in 1958; 2,694,000 long tons were exported in 1960. Imports rose, too, but less; from 892,000 long tons in 1958 to 1,299,000 long tons in 1960.

3. On trade route 7 (U.S. North Atlantic ports to and from North Sea-German ports): 566,000 long tons were exported in 1958; and 556,000 long tons were exported in 1960. Imports, also rose slightly; from 362,000 long tons in 1958 to 376,000 long tons in 1960.

4. On trade route 21 (U.S. Gulf ports to and from the United Kingdom, Ireland, and continental Europe, north of Portugal): in 1958 we exported 2,699,000 long tons; in 1960, 3,024,000 long tons. Imports during this same period rose only from 696,000 to 705,000 long tons.

These four trade routes were picked because of their importance.

CONCLUSION

Clearly our exports are growing in relation to our imports, thanks to the conference system.

Question: Can steamship conferences so conduct themselves as to be detrimental to our foreign commerce, or unjustly discriminatory or unfair as between exporters from the United States and their foreign competitors?

Answer: No, not without violating express prohibitions of the Shipping Act, 1916, as amended by this legislation.

Total liner (ocean common carrier) cargo carried
[Measured in thousands of long tons of 2,240 pounds]

Trade route	Year	Exports		Imports		Trade route	Year	Exports		Imports	
Trade Route 7, U.S. North Atlantic ports to and from North Sea-Germany ports.	1960	Total.....	556	Total.....	376	Trade Route 21, U.S. gulf to and from United Kingdom, Ireland, and continental Europe (north of Portugal).	1960	Total.....	3,024	Total.....	705
		(United States..	104)	(United States..	91)			(United States..	966)	(United States..	167)
		(Foreign.....	452)	(Foreign.....	285)			(Foreign.....	2,058)	(Foreign.....	538)
	1959	Total.....	466	Total.....	433	1959	Total.....	2,935	Total.....	1,015	
		(United States..	69)	(United States..	98)		(United States..	902)	(United States..	230)	
		(Foreign.....	397)	(Foreign.....	335)		(Foreign.....	2,033)	(Foreign.....	785)	
	1958	Total.....	566	Total.....	362	1958	Total.....	2,699	Total.....	696	
		(United States..	107)	(United States..	83)		(United States..	854)	(United States..	170)	
		(Foreign.....	459)	(Foreign.....	279)		(Foreign.....	1,846)	(Foreign.....	526)	
Trade Route 12, U.S. Atlantic ports to and from the Far East.	1960	Total.....	2,721	Total.....	1,728	Trade Route 29, U.S. Pacific coast from and to the Far East (also Hawaii and Alaska).	1960	Total.....	2,694	Total.....	1,299
		(United States..	372)	(United States..	256)			(United States..	1,318)	(United States..	617)
		(Foreign.....	2,349)	(Foreign.....	1,472)			(Foreign.....	1,376)	(Foreign.....	682)
	1959	Total.....	2,429	Total.....	1,774	1959	Total.....	2,122	Total.....	1,390	
		(United States..	264)	(United States..	283)		(United States..	994)	(United States..	697)	
		(Foreign.....	2,165)	(Foreign.....	1,491)		(Foreign.....	1,128)	(Foreign.....	693)	
	1958	Total.....	2,360	Total.....	1,670	1958	Total.....	1,511	Total.....	892	
		(United States..	322)	(United States..	302)		(United States..	921)	(United States..	437)	
		(Foreign.....	2,037)	(Foreign.....	1,367)		(Foreign.....	590)	(Foreign.....	455)	

Mr. ENGLE. Mr. President, the memorandum demonstrates that although the United States suffers sometimes from a disparity of rates, nevertheless the commerce of the United States has increased over these major trade routes. We still have problems. However, for the first time in many months, there is no outflow of gold today. The outflow of gold is not based upon an adverse trade balance. We have always had about a \$4 billion favorable trade balance. We lost it through maintaining troops overseas; we lost it through the foreign aid program. However, our trade is improving.

What I am saying is that we have written a bill which undertakes to control the conference system. We have supported conference systems because we know that they afford the only way of maintaining stable routes and stable procedures in international shipping.

That is why, when we got down to brass tacks, we ended with a bill which was reported by the Committee on Commerce by a unanimous vote. The bill passed the Senate without even a yea-and-nay vote, following a couple of yea-

and-nay votes on amendments offered by the distinguished Senator from Tennessee which involved provisions sought to be placed in the bill, but which were repudiated by the Senate.

Thereafter, the Senate conferees went to conference with Members of the House of Representatives. We sat in conference for 2 days. The House conferees agreed in substance to the Senate bill, not by a fragment of the conferees, not by a small majority, but unanimously.

So today the Senate has before it a bill which was reported by the Committee on Commerce by a unanimous vote of the members of that great committee, comprising the most informed men in this field in this body. We have a bill which passed the Senate without even a yea-and-nay vote. We have a bill which comes back from a conference between the two Houses with the unanimous agreement of the conferees of both Houses, Republicans and Democrats alike.

We have a bill which went to the floor of the House of Representatives—because the House had to act first on the

As amended by this act, the Maritime Commission would be required to disapprove any conference or other ocean common carrier freight rate which is so unreasonably high or low as to be detrimental to the foreign commerce of the United States. The Commission would also be required to disapprove any conference agreement which operated to the detriment of our foreign commerce.

As for our exporters vis-a-vis their foreign competitors, section 15, Shipping Act, 1916, as amended by this bill would require the Commission to disapprove, cancel or modify any conference agreement which is unjustly discriminatory or unfair as between * * * exporters from the United States and their foreign competitors * * *." Section 17 would forbid any common carrier by water in foreign commerce to charge any rate which is unjustly prejudicial to exporters of the United States as compared with their foreign competitors.

INFORMATION FROM THE MARITIME ADMINISTRATION—OFFICE OF SHIPPING STATISTICS
(Information furnished by Mrs. Alice Neitzey, September 14, 1961)

The following information has been compiled from Maritime Administration's forms 7801 and 7802. These forms are filed with the Maritime Administration by all ocean common carriers serving U.S. ports. They show the following:

conference report on the bill—and was concurred in without even a yea-and-nay vote.

Now, I ask, What does it take to get a bill passed in the Senate? I believe we may say to the Senate today that the composite intelligence, experience, and knowledge of the men having the most expertise in this field have now come to a common agreement, and that we have devised the best bill possible.

Mr. President, I ask the Senate to agree to the conference report.

I yield back the remainder of my time.

Mr. KEFAUVER. I yield back the remainder of my time.

Mr. ENGLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The hour of 4 o'clock having arrived, and all remaining time under the agree-

ment having been yielded back, the question now is on agreeing to the conference report. [Putting the question.]

The "ayes" appear to have it.

Mr. KEFAUVER. Mr. President, on this question, I ask for a division.

On a division, the report was agreed to.

Mr. ENGLE. Mr. President, I move that the vote by which the report was agreed to be reconsidered.

Mr. BARTLETT. Mr. President, I move to lay on the table the motion to reconsider.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of executive business, to consider Calendar No. 9 and Calendar No. 11 on the Executive Calendar, being the International Telecommunications Convention and the radio regulations treaty.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Montana will state it.

Mr. MANSFIELD. Under the unanimous-consent agreement entered into earlier today, is it the intention of the Chair now to have the yea-and-nay vote on the two treaties commence?

The PRESIDING OFFICER. Yes. It is the understanding of the Chair that, under the unanimous-consent agreement entered into earlier today, the Senate will now proceed, automatically, to a yea-and-nay vote on the question of agreeing to the resolutions of ratification of the two treaties, with one vote to be taken on both resolutions of ratification.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from New York will state it.

Mr. JAVITS. Does the unanimous-consent agreement require that the yea-and-nay vote be taken now; or may Senators be recognized at this time?

The PRESIDING OFFICER. The agreement calls for the vote to be taken immediately following disposition of the conference report on the dual rate bill.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Montana will state it.

Mr. MANSFIELD. Is the Senate now to vote on the question of agreeing to the resolutions of ratification of the two treaties, but with the vote to be shown twice in the Record?

The PRESIDING OFFICER. That is correct.

INTERNATIONAL TELECOMMUNICATIONS CONVENTION

The PRESIDING OFFICER. Under unanimous-consent agreement entered into early today, the Senate will now

proceed to vote, by yea-and-nay vote, on the question of agreeing to the resolution of ratification of Executive Calendar Order No. 9, Executive J, 86th Congress, 2d session, the International Telecommunications Convention, with annexes, and the final protocol to the convention.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Nevada [Mr. BIBLE], the Senator from New Mexico [Mr. ANDERSON], the Senator from North Dakota [Mr. BURDICK], the Senator from Nevada [Mr. CANNON], the Senator from Pennsylvania [Mr. CLARK], the Senator from Connecticut [Mr. DODD], the Senator from Mississippi [Mr. EASTLAND], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Alaska [Mr. GRUENING], the Senator from Indiana [Mr. HARTKE], the Senator from Missouri [Mr. LONG], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Utah [Mr. MOSS], the Senator from Oregon [Mrs. NEUBERGER], the Senator from Virginia [Mr. ROBERTSON], the Senator from Florida [Mr. SMATHERS], the Senator from Massachusetts [Mr. SMITH], the Senator from Georgia [Mr. TALMADGE], and the Senator from Ohio [Mr. YOUNG] are absent on official business.

I also announce that the Senator from New Mexico [Mr. CHAVEZ] is absent because of illness.

I further announce that, if present and voting, the Senator from New Mexico [Mr. ANDERSON], the Senator from Nevada [Mr. BIBLE], the Senator from North Dakota [Mr. BURDICK], the Senator from Nevada [Mr. CANNON], the Senator from New Mexico [Mr. CHAVEZ], the Senator from Pennsylvania [Mr. CLARK], the Senator from Connecticut [Mr. DODD], the Senator from Mississippi [Mr. EASTLAND], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Alaska [Mr. GRUENING], the Senator from Indiana [Mr. HARTKE], the Senator from Missouri [Mr. LONG], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Utah [Mr. MOSS], the Senator from Oregon [Mrs. NEUBERGER], the Senator from Virginia [Mr. ROBERTSON], the Senator from Florida [Mr. SMATHERS], the Senator from Massachusetts [Mr. SMITH], the Senator from Georgia [Mr. TALMADGE], and the Senator from Ohio [Mr. YOUNG] would each vote "yea."

Mr. KUCHEL. I announce that the Senator from Vermont [Mr. AIKEN] is absent by leave of the Senate.

The Senator from Maryland [Mr. BEALL] and the Senator from Texas [Mr. TOWER] are absent by leave of the Senate attend the Commonwealth Parliamentary Conference in London.

The Senator from Colorado [Mr. ALLOTT] and the Senator from Kansas [Mr. SCHOEPP] are absent by leave of the Senate to attend the Interparliamentary Conference in Brussels.

The Senator from Utah [Mr. BENNETT], the Senator from Maryland [Mr. BUTLER], the Senator from Indiana [Mr. CAPEHART], the Senator from New Hampshire [Mr. COTTON], the Senator from Hawaii [Mr. FONG], the Senator from

Iowa [Mr. MILLER], the Senator from Kentucky [Mr. MORTON], and the Senator from Pennsylvania [Mr. SCOTT] are necessarily absent.

The Senator from New Hampshire [Mr. BRIDGES] is absent because of illness.

If present and voting, the Senator from Vermont [Mr. AIKEN], the Senator from Colorado [Mr. ALLOTT], the Senators from Maryland [Mr. BEALL and Mr. BUTLER], the Senator from Utah [Mr. BENNETT], the Senator from Indiana [Mr. CAPEHART], the Senator from New Hampshire [Mr. COTTON], the Senator from Hawaii [Mr. FONG], the Senator from Iowa [Mr. MILLER], the Senator from Kentucky [Mr. MORTON], the Senator from Kansas [Mr. SCHOEPP], and the Senator from Pennsylvania [Mr. SCOTT] would each vote "yea."

The yeas and nays resulted—yeas 66, nays 0, as follows:

[Ex. 1] YEAS—66		
Bartlett	Hickenlooper	Metcalf
Boggs	Hickey	Monroney
Bush	Hill	Morse
Byrd, Va.	Holland	Mundt
Byrd, W. Va.	Hruska	Muskie
Carlson	Humphrey	Pastore
Carroll	Jackson	Pell
Case, N.J.	Javits	Prouty
Case, S. Dak.	Johnston	Proxmire
Church	Jordan	Randolph
Cooper	Keating	Russell
Curtis	Kefauver	Saltonstall
Dirksen	Kerr	Smith, Maine
Douglas	Kuchel	Sparkman
Dworshak	Lausche	Stennis
Ellender	Long, Hawaii	Symington
Engle	Long, La.	Thurmond
Ervin	Magnuson	Wiley
Goldwater	Mansfield	Williams, N.J.
Gore	McClellan	Williams, Del.
Hart	McGee	Yarborough
Hayden	McNamara	Young, N. Dak.

NAYS—0

NOT VOTING—34

Aiken	Clark	Moss
Allott	Cotton	Neuberger
Anderson	Dodd	Robertson
Beall	Eastland	Schoeppel
Bennett	Fong	Scott
Bible	Fulbright	Smathers
Bridges	Gruening	Smith, Mass.
Burdick	Hartke	Talmadge
Butler	Long, Mo.	Tower
Cannon	McCarthy	Young, Ohio
Capehart	Miller	
Chavez	Morton	

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

GENEVA RADIO REGULATIONS

The PRESIDING OFFICER. The question now comes on agreeing to the resolution of ratification of Executive Calendar Order No. 11, Executive I, 86th Congress, 2d session, the Geneva radio regulations, with appendixes and an additional protocol.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Nevada [Mr. BIBLE], the Senator from New Mexico [Mr. ANDERSON], the Senator from North Dakota [Mr. BURDICK], the Senator from Nevada [Mr. CANNON], the Senator from Pennsylvania [Mr. CLARK], the Senator from Connecticut [Mr. DODD], the Senator from Mississippi [Mr. EASTLAND], the Senator from Arkansas [Mr. FULBRIGHT],



An Act

75 STAT. 762.

To amend the Shipping Act, 1916, as amended, to authorize ocean common carriers and conferences thereof serving the foreign commerce of the United States to enter into effective and fair dual rate contracts with shippers and consignees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Shipping Act, 1916, is amended by adding after section 14a a new section to read as follows:

“SEC. 14b. Notwithstanding any other provisions of this Act, on application the Federal Maritime Commission (hereinafter ‘Commission’), shall, after notice, and hearing, by order, permit the use by any common carrier or conference of such carriers in foreign commerce of any contract, amendment, or modification thereof, which is available to all shippers and consignees on equal terms and conditions, which provides lower rates to a shipper or consignee who agrees to give all or any fixed portion of his patronage to such carrier or conference of carriers unless the Commission finds that the contract, amendment, or modification thereof will be detrimental to the commerce of the United States or contrary to the public interest, or unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, and provided the contract, amendment, or modification thereof, expressly (1) permits prompt release of the contract shipper from the contract with respect to any shipment or shipments for which the contracting carrier or conference of carriers cannot provide as much space as the contract shipper shall require on reasonable notice; (2) provides that whenever a tariff rate for the carriage of goods under the contract becomes effective, insofar as it is under the control of the carrier or conference of carriers, it shall not be increased before a reasonable period, but in no case less than ninety days; (3) covers only those goods of the contract shipper as to the shipment of which he has the legal right at the time of shipment to select the carrier: *Provided, however,* That it shall be deemed a breach of the contract if, before the time of shipment and with the intent to avoid his obligation under the contract, the contract shipper divests himself, or with the same intent permits himself to be divested, of the legal right to select the carrier and the shipment is carried by a carrier which is not a party to the contract; (4) does not require the contract shipper to divert shipment of goods from natural routings not served by the carrier or conference of carriers where direct carriage is available; (5) limits damages recoverable for breach by either party to actual damages to be determined after breach in accordance with the principles of contract law: *Provided, however,* That the contract may specify that in the case of a breach by a contract shipper the damages may be an amount not exceeding the freight charges computed at the contract rate on the particular shipment, less the cost of handling; (6) permits the contract shipper to terminate at any time without penalty upon ninety days’ notice: (7) provides for a spread between ordinary rates and rates charged contract shippers which the Commission finds to be reasonable in all the circumstances but which spread shall in no event be more than 15 per centum of the ordinary rates; (8) excludes cargo of the contract shippers which is loaded and carried in bulk without mark or count except liquid bulk cargoes, other than chemicals, in less than full shipload lots: *Provided, however,* That upon finding that economic factors so warrant, the Commission may exclude from the contract any commodity subject to the

Shipping Act, 1916,
amendments.
40 Stat. 903.
46 USC 842.
Foreign commerce.
Common carriers,
dual rate con-
tracts.

Notice and
hearing.

foregoing exception; and (9) contains such other provisions not inconsistent herewith as the Commission shall require or permit. The Commission shall withdraw permission which it has granted under the authority contained in this section for the use of any contract if it finds, after notice and hearing, that the use of such contract is detrimental to the commerce of the United States or contrary to the public interest, or is unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors. The carrier or conference of carriers may on ninety days' notice terminate without penalty the contract rate system herein authorized, in whole or with respect to any commodity: *Provided, however,* That after such termination the carrier or conference of carriers may not reinstitute such contract rate system or part thereof so terminated without prior permission by the Commission in accordance with the provisions of this section. Any contract, amendment, or modification of any contract not permitted by the Commission shall be unlawful, and contracts, amendments, and modifications shall be lawful only when and as long as permitted by the Commission: before permission is granted or after permission is withdrawn it shall be unlawful to carry out in whole or in part, directly or indirectly, any such contract, amendment, or modification. As used in this section, the term 'contract shipper' means a person other than a carrier or conference of carriers who is a party to a contract the use of which may be permitted under this section."

SEC. 2. Section 15, Shipping Act, 1916, is amended to read as follows:

"SEC. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements.

"The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to con-

39 Stat. 733.
46 USC 814.

Filing of agree-
ments, etc.

Discriminatory
agreements, dis-
approval.

ference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

"The Commission shall disapprove any such agreement, after notice and hearing, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

"Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by section 14b of this Act which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, shall be permitted to take effect without prior approval upon compliance with the publication and filing requirements of section 18(b) hereof and with the provisions of any regulations the Commission may adopt.

Ante, p. 762.

"Every agreement, modification, or cancellation lawful under this section, or permitted under section 14b, shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', and amendments and Acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', and amendments and Acts supplementary thereto.

26 Stat. 209.
15 USC 1-7.

28 Stat. 570.
15 USC 8-11.

"Whoever violates any provision of this section or of section 14b shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action."

SEC. 3. Notwithstanding the provisions of sections 14, 14b, and 15, Shipping Act, 1916, as amended by this Act, all existing agreements which are lawful under the Shipping Act, 1916, immediately prior to enactment of this Act, shall remain lawful unless disapproved, canceled, or modified by the Commission pursuant to the provisions of the Shipping Act, 1916, as amended by this Act: *Provided, however*, That all such existing agreements which are rendered unlawful by the provisions of such Act as hereby amended must be amended to comply with the provisions of such Act as hereby amended, and if such amendments are filed for approval within six months after the enactment of this Act, such agreements so amended shall be lawful for a further period of not to exceed one year after such filing. Within such year the Commission shall approve, disapprove, cancel or modify all such agreements and amendments in accordance with the provisions of this Act.

Existing agreements, modification, etc.

SEC. 4. Section 18, Shipping Act, 1916, is hereby amended as follows:

(a) Insert "(a)" immediately after the section number "18".

(b) Add the following subsection 18(b):

"(b)(1) From and after ninety days following enactment hereof every common carrier by water in foreign commerce and every conference of such carriers shall file with the Commission and keep open

Filing of carrier rates, etc.

to public inspection tariffs showing all the rates and charges of such carrier or conference of carriers for transportation to and from United States ports and foreign ports between all points on its own route and on any through route which has been established. Such tariffs shall plainly show the places between which freight will be carried, and shall contain the classification of freight in force, and shall also state separately such terminal or other charge, privilege, or facility under the control of the carrier or conference of carriers which is granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, or charges, and shall include specimens of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement. Copies of such tariffs shall be made available to any person and a reasonable charge may be made therefor. The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count.

Rate changes.

"(2) No change shall be made in rates, charges, classifications, rules or regulations, which results in an increase in cost to the shipper, nor shall any new or initial rate of any common carrier by water in foreign commerce or conference of such carriers be instituted, except by the publication, and filing, as aforesaid, of a new tariff or tariffs which shall become effective not earlier than thirty days after the date of publication and filing thereof with the Commission, and each such tariff or tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the time when the rates, charges, classifications, rules or regulations as changed are to become effective: *Provided, however,* That the Commission may, in its discretion and for good cause, allow such changes and such new or initial rates to become effective upon less than the period of thirty days herein specified. Any change in the rates, charges, or classifications, rules or regulations which results in a decreased cost to the shipper may become effective upon the publication and filing with the Commission. The term "tariff" as used in this paragraph shall include any amendment, supplement or reissue.

"Tariff".

Collection of specified rates only.

"(3) No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and duly published and in effect at the time; nor shall any such carrier rebate, refund, or remit in any manner or by any device any portion of the rates or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs.

"(4) The Commission shall by regulations prescribe the form and manner in which the tariffs required by this section shall be published and filed; and the Commission is authorized to reject any tariff filed with it which is not in conformity with this section and with such regulations. Upon rejection by the Commission, a tariff shall be void and its use unlawful.

"(5) The Commission shall disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

Penalty.

"(6) Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action."

39 Stat. 735.
46 USC 819.

SEC. 5. Section 20, Shipping Act, 1916, is amended by changing the period at the end thereof to a semicolon and adding the following: "or

to prevent any common carrier by water which is a party to a conference agreement approved pursuant to section 15 of this Act, or any other person subject to this Act, or any receiver, trustee, lessee, agent, or employee of such carrier or person, or any other person authorized by such carrier to receive information, from giving information to the conference or any person, firm, corporation, or agency designated by the conference, or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with the conference or its member lines or of determining whether a member of the conference has breached the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act shall be unlawful."

SEC. 6. Section 16 First, Shipping Act, 1916 (39 Stat. 734; 46 U.S.C. 815), is hereby amended by deleting the period at the end thereof and adding the following: ": *Provided*, That within thirty days after enactment of this Act, or within thirty days after the effective date or the filing with the Commission, whichever is later, of any conference freight rate, rule, or regulation in the foreign commerce of the United States, the Governor of any State, Commonwealth, or possession of the United States may file a protest with the Commission upon the ground that the rate, rule, or regulation unjustly discriminates against that State, Commonwealth, or possession of the United States, in which case the Commission shall issue an order to the conference to show cause why the rate, rule, or regulation should not be set aside. Within one hundred and eighty days from the date of the issuance of such order, the Commission shall determine whether or not such rate, rule, or regulation is unjustly discriminatory and issue a final order either dismissing the protest, or setting aside the rate, rule, or regulation."

Filing of protests.
49 Stat. 1518.

SEC. 7. The Shipping Act, 1916, is hereby amended by inserting a new section 43 reading as follows:

Rules and regulations.

"SEC. 43. The Commission shall make such rules and regulations as may be necessary to carry out the provisions of this Act."

Approved October 3, 1961.

87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

JULY 14, 1961

Referred to the Committee on Commerce and ordered to be printed

AMENDMENT

Intended to be proposed by Mr. GRUENING (for himself and Mr. BARTLETT) to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz: At the end thereof add the following new section:

1 SEC. 8. Section 16 (first) of the Shipping Act, 1916
2 (39 Stat. 734; 46 U.S.C. 815) is hereby amended by add-
3 ing at the end thereof the following: "*Provided*, That within
4 thirty days after enactment of this Act, or within thirty days
5 after the effective date or the filing with the Board, which-
6 ever is later, of any conference freight rate, rule, or regula-
7 tion, the Governor of any State, Commonwealth, or posses-
8 sion of the United States may file a protest with the Board

87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENT

Intended to be proposed by Mr. GRUENING (for himself and Mr. BARTLETT) to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

JULY 14, 1961

Referred to the Committee on Commerce and ordered
to be printed

Calendar No. 842

87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

- 1 On page 14, line 19, after the word "thereof," insert "is
- 2 intended or will be reasonably likely to cause the exclusion
- 3 of any other carrier from the trade, or".

87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

Calendar No. 842

87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

- 1 On page 16, line 11, after the word “contract” insert
- 2 “tends to cause the elimination from, or prevent the entry
- 3 into the trade of any carrier, or”.

9-1-61—D

87TH CONGRESS
1ST Session

H. R. 6775

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

Calendar No. 842

87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

- 1 On page 18, line 16, after the word "withdrawal" insert
- 2 ", or (3) the probable effect of which will be reasonably
- 3 likely to exclude any carrier from any trade".

9-1-61—E

87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

Calendar No. 842

87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

- 1 On page 14, line 7, strike out "SEC. 2." and insert
- 2 "That" and renumber sections of the bill to conform.

9-1-61—F

87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

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87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

- 1 On page 19, line 15, after the word "adopt" insert the
- 2 following: "However, the Commission shall disapprove any
- 3 conference rate, fare, or charge which after hearing it finds
- 4 to be so unreasonably high or low as to be detrimental to
- 5 the commerce of the United States."

87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

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87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

1 On page 24, line 24, after "States," insert the follow-
2 ing: "any port authority or municipality which operates a
3 port within the United States, or".

4 On page 25, line 2, after "that" insert "port,".

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

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87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

1 On page 24, line 17, after "8" insert "(a)".

2 On page 25, after line 10, insert the following new sub-
3 section:

4 "(b) Section 21, Shipping Act, 1916, is amended
5 to read as follows:

6 "SEC. 21. (a) That the Commission may require any
7 common carrier by water, or other person subject to this
8 Act, or any officer, or receiver, trustee, lessee, agent, or
9 employee thereof, to file with it any periodical or special
10 report, or any account, record, rate, or charge, or any

1 memorandum of any facts and transactions appertaining
2 to the business of such carrier or other person subject to
3 this Act. Such report, account, record, rate, charge, or
4 memorandum shall be under oath whenever the Commis-
5 sion so requires, and shall be furnished in the form and
6 within the time prescribed by the Board. Every common
7 carrier by water engaged in the foreign commerce of the
8 United States shall (1) designate a person upon whom
9 service of process may be made within the United States
10 in any action, proceeding, or investigation brought by or on
11 behalf of the United States or any agency thereof, and (2)
12 provide records or other information, wherever located, re-
13 quired by any order of the Commission which contains the
14 minimum notice provisions required by the Administrative
15 Procedure Act (5 U.S.C. 1001 and the following), unless
16 the furnishing of such records or information is prohibited by
17 any foreign nation. Whoever fails to file any report, account,
18 record, rate, charge, memorandum, or other information as
19 required by this section shall forfeit to the United States the
20 sum of \$100 for each day of such default.' ”

87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

1 On page 18, line 16, after the word "withdrawal", in-
2 sert the following: " , or (3) which fails to designate a person
3 upon whom service of process may be made within the
4 United States which will be effective against every signatory
5 to such agreement, or (4) which fails to contain provisions
6 that every signatory shall provide records or other informa-
7 tion, wherever located, required by any order of the Commis-
8 sion which contains the minimum notice provisions required
9 by the Administrative Procedure Act (5 U.S.C. 1001 and
10 the following) , unless the furnishing of such information or
11 records is prohibited by any foreign nation."

87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

1 On page 16, line 22, after the period, insert the follow-
2 ing: "Any contract, amendment, or modification of any
3 contract not permitted by the Commission shall be unlawful,
4 and contracts, amendments, and modifications shall be lawful
5 only when and as long as permitted by the Commission;
6 before permission is granted or after permission is withdrawn
7 it shall be unlawful to carry out in whole or in part, directly
8 or indirectly, any such contract, amendment, or modifica-
9 tion."

10 On page 20, line 1, after the word "section" insert "or
11 of section 14b".

87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

Calendar No. 842

87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

- 1 On page 18, lines 9 and 10, after the words “naturally
- 2 competitive” strike out “unless each conference retains the
- 3 right of independent action”.

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87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

Calendar No. 842

87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

- 1 On page 23, beginning with line 22, strike out all of sec-
- 2 tion 6 and renumber the remaining sections of the Act to
- 3 conform.

9-1-61—M

87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

- 1 On page 15, lines 22 and 23, after the word “exceeding”
- 2 strike out “the freight charges computed at the contract rate
- 3 on the particular shipment, less cost of handling” and in
- 4 lieu thereof insert the following: “one and one-half times
- 5 the spread between contract and noncontract rate on the par-
- 6 ticular shipment”.

87TH CONGRESS
1ST Session

H. R. 6775

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

Calendar No. 842

87TH CONGRESS
1ST SESSION

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

1 On page 14, line 11, after "notice" insert "and hearing".

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87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENT

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 1, 1961

Ordered to lie on the table and to be printed

H. R. 6775

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 1961

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences, viz:

- 1 On page 14, strike lines 4 through 6.
- 2 On page 14, line 7, strike out "SEC. 2." and insert in
- 3 lieu thereof "That" and renumber sections of the bill to
- 4 conform.

87TH CONGRESS
1ST SESSION

H. R. 6775

AMENDMENTS

Intended to be proposed by Mr. KEFAUVER to the bill (H.R. 6775) to amend the Shipping Act, 1916, as amended, to provide for the operation of steamship conferences.

SEPTEMBER 6, 1961

Ordered to lie on the table and to be printed